



Freedom of Information Act 1982

Instrument of Authorisation

I, Gordon de Brouwer, Secretary of the Department of the Environment and Energy under sections 10A and 23(1) of the *Freedom of Information Act 1982*, hereby:

- (1) revoke all existing authorisations under these provisions of the Act in respect of this Department and its predecessors; and
- (2) authorise each officer who from time to time holds, or occupies or performs the duties of a position in an authorisation group listed in Schedule 1 to this instrument to exercise my powers and functions that are specified in Schedule 2, subject to any limitation specified in this instrument.

Gordon de Brouwer

Gordon de Brouwer

Dated: 17/5/17

Schedule 1 – FOI authorisation groups

Group	Local Description	Classification
1	Deputy Secretary First Assistant Secretary	SES B3 SES B2 and equivalent
2	Assistant Secretary	SES B1 and equivalent
3	Principal Legal Officer, General Counsel Branch, with functional responsibility for Freedom of Information	PLO
4	Senior Legal Officer, General Counsel Branch, with functional responsibility for Freedom of Information	SLO
5	Legal Officer and APS5/6 staff in General Counsel Branch with functional responsibility for Freedom of Information	LO/APS5/APS6

Schedule 2 – FOI Authorisations

Power or function	Authorisation group				
	1	2	3	4	5
Information publication					
Sections 8 and 8D – Determine and authorise publication of information under Department’s Information Publication Scheme obligations and make any associated decisions.	X	X			
Primary requests for access to documents					
Parts III and IV - Make all decisions and discharge all functions in relation to primary requests for access to documents <i>Limitation: Officers who are acting in a position falling in authorisation group 2 for a period less than twelve weeks must not make access grant or access refusal decisions.</i>	X	X			
Section 15(2) and 15(2A) - Decide to refuse a primary request that does not meet the validity requirements of the Act.			X	X	
Section 15(5)(a) - Acknowledge receipt of a primary request			X	X	X
Sections 15AA, 15AB and 15AC(4) - Request that processing time be extended			X	X	
Section 16 – Decide to seek transfer of a primary request			X		
Internal review					
Part VI – Make all decisions and discharge all functions in relation to internal review requests	X				
Section 54B(1)(b)(i) - Grant to applicant extension of time for making an internal review application		X			
Section 54D(3) - Apply to the Information Commissioner for an extension of time to deal with an internal review application		X	X	X	
Information Commissioner and Administrative Appeals Tribunal reviews					
Parts VII and VIIA - Make all decisions and discharge all functions in relation to Information Commissioner and AAT applications	X				
Section 55E - Provide statement of reasons to the Information Commissioner		X			
Section 55G(1) - Vary an access refusal decision during an Information Commissioner review process		X			

Power or function	Authorisation group				
	1	2	3	4	5
<i>Amendment and annotation of records</i>					
Sections 49 and 51A - <i>Make decisions on validity of requests for amendment or annotation of records</i>	X	X	X	X	
Section 51C - <i>Make decisions in relation to transfer of requests for amendment or annotation of records</i>	X	X	X	X	
Sections 50, 51, 51B, 51D and 51DA - <i>Make decisions requests for amendment or annotation of records</i>	X	X			
<i>Miscellaneous</i>					
Sections 89K(3) and 89M(3) - <i>Apply to the Information Commissioner for a vexatious applicant decision and notify the applicant of the decision</i>	X				
Various provisions – <i>Implement decisions made by authorised officers and provide notifications specified in the Act</i>			X	X	X



PROCESSING FOI REQUESTS

- The FOI Act gives the public rights to access records held by departments, agencies and ministers' offices.
- In the Department, the General Counsel Branch coordinates the processing of FOI requests. Branches are responsible for locating documents, identifying sensitivities and staff details on the documents, and supporting their SES to make FOI decisions.
- The General Counsel Branch can assist and advise you on all aspects of FOI.
- This FOI guidance note sets out how we handle FOI requests in the Department. The flowchart below provides an overview of the process.

How we allocate requests

- All FOI requests must first go to the FOI Contact Officer.
- Only an authorised officer can make a decision on access.

The FOI Contact Officer usually receives FOI requests. If you receive a request directly, please send it to the FOI Contact Officer immediately at FOI@environment.gov.au.

The FOI Contact Officer will allocate requests and will consult with relevant line areas if the responsible area is not clear.

Decisions on access must be made by staff authorised to do so by the Secretary under subsection 23(1) of the FOI Act. A copy of this is available on the GCB intranet page: [FOI Instrument of Authorisation](#).

The authorised decision-maker will be at the SES Band 1 or above and is generally part of the Branch or Division which has subject-matter responsibility for the requested documents.

The FOI Contact Officer will acknowledge receipt of the request by sending an acknowledgement letter or email to the applicant within 14 calendar days of receipt of the request confirming the scope of the applicant's request.

What is a valid request?

- The FOI Contact Officer will consider the validity of a request.
- A decision on a valid request must be made within 30 calendar days.

The FOI Contact Officer will consider whether the FOI request is valid under section 15 of the FOI Act. A valid request must:

- be in writing;

- state that the request is an application for the purposes of the FOI Act;
- provide sufficient information concerning the document(s) to enable the Department to identify the document(s); and
- give details of how notices may be sent.

If the request is valid, the Department has **30 calendar days** in which to process and to make a decision on access in relation to the requested documents (the day a request is received is day zero). If the request received is invalid the FOI Contact Officer is obliged to take reasonable steps to assist the applicant to make a valid FOI request.

Should the request be transferred?

In some cases, the Department receives valid requests that are more appropriately dealt the by other agencies (including a Minister's office). This will be considered by the FOI Contact Officer in the first instance, but sometimes they will require guidance from line areas.

If you think a request falls within another agency's responsibilities, you should consult the FOI Contact Officer as early as possible, as there is no allowance of further processing time even if the request is transferred to another agency.

Can the applicant revise the scope of the request?

The applicant may revise the scope of their request at any time.

The Department will often contact applicants early in the process to seek clarification of requests, or to negotiate about scope in order to assist with efficient and timely processing. This contact must only be undertaken through the FOI Contact Officer or the Legal Officers allocated to the FOI request.

Can valid FOI requests be rejected?

No. Even if all the documents are exempt from release or there are no relevant documents a valid request must be processed.

However, for unclear and voluminous requests the Department may, in certain circumstances, trigger a process that can lead to refusal of the request on the basis it is impractical to process (see below). You must consult the FOI Contact Officer before seeking to use this process.

How we contact you about an FOI request

- The FOI Contact Officer will identify the most relevant line area and send the request to the First Assistant Secretary of the relevant division.
- The First Assistant Secretary will nominate a decision-maker.
- The decision-maker will receive guidance information from the FOI Contact Officer.
- Where multiple divisions are involved, one division will need to lead in processing the request, including coordinating search and retrieval across divisions, and consulting internally on sensitivities.

The FOI Contact Officer will email the relevant First Assistant Secretary seeking nomination of a decision-maker, with a copy of the FOI request attached. The Secretary and his EO, relevant Deputy Secretary, General Counsel and Media team are copied into the email.

- The email will set out the initial timeline for the request.
- If a nomination of decision-maker is not received after two days, the FOI Contact Officer will follow up with another email or phone call.
- Sometimes a request may contain sensitive information or have political ramifications. It is the responsibility of the Divisional SES to contact the Minister's Office regarding such requests. For further information see [FOI Guidance – FOI requests for Ministerial documents](#).

Once a decision-maker is nominated, the FOI Contact Officer will email them with a copy of the FOI request and guidance information, including the *Search, Retrieval and Sensitivity Analysis Minute*. The minute sets out what you need to do and the timeline to provide results of document searches.

Practical refusal reason – section 24AB process

- Unclear and voluminous requests can be refused.
- Contact the FOI Team if the request is unclear and/or likely to be voluminous.
- The applicant must be consulted before refusing a request as unclear or voluminous.

A practical refusal reason (see section 24AA of the FOI Act) can be used for a request for a document if:

- the work involved in processing the request would substantially and unreasonably divert the resources of the Department; and/or
- the document cannot be identified from the request.

If a practical refusal reason exists, you must undertake a *request consultation process* (see section 24AB of the FOI Act). On request, the FOI Contact Officer will prepare a written notice to the applicant providing 14 days in which the applicant can contact the Department and, in writing, revise the request, withdraw the request, or indicate that they do not wish to revise the request.

The request will be deemed withdrawn if the applicant does not contact the Department during the consultation period.

If you believe a practical refusal reason exists, you must seek advice from the relevant Legal Officers in GCB to ensure the FOI Act requirements are met.

If a section 24AB process has been initiated, and the applicant contacts the Department to revise the scope of the request, the Department must take reasonable steps to assist the applicant to revise the scope of the request so that the practical refusal reason no longer exists.

Note that issuing a 24AB notice does not necessarily mean that the request will end. Rather, the FOI timeframe will be *paused* until it is refined to a manageable size. If the request is

subsequently refined within 14 days, the FOI timeframe will re-commence at the point at which it paused. For this reason, it is important to identify if a request is too large to process as early as possible, because you may not receive extra time to process it.

Search and Retrieval of documents

- Line areas are responsible for document search and retrieval, including ensuring that documents held by other divisions are captured.
- Line areas must let the FOI Contact Officer know by Day 3 if the scope of the request is unclear or if the request is likely to be voluminous.
- Once documents have been retrieved and sensitivity analysis conducted, the Line Area Contact Officer must meet with decision-maker and Legal Officers managing the request. This will ensure there is early agreement on the best approach.

Document search and retrieval is carried out by relevant line areas. The line area must:

- search for and retrieve the documents subject to the request;
- prepare the documents consistent with the processes in the *FOI Guidance – FOI documentation and Management* (including removing duplicates, converting the documents to PDF and providing them with appropriate filenames);
- identify sensitivities and staff names / details on the documents, preferably by highlighting in Adobe (or on hardcopies and scanned); and
- complete the FOI Document Schedule, which includes advising on any potential sensitivities within the documents (and consultation, if required).

In order to make sure that the decision maker is happy with the direction of the request, the Line Area Contact Officer, decision-maker and Legal Officers managing the request will have a short meeting to confirm the documents within scope and potential sensitivities. This ensures there is early agreement on the best approach and to deal with any initial questions.

The Line Area Contact Officer must complete the *Search, Retrieval and Sensitivity Analysis Minute* and Document Schedule to verify the search and retrieval process. The documents should be provided to the FOI Contact Officer.

Recommendations to decision-maker

Once the documents are received, the relevant Legal Officers will assess and make recommendations to the decision-maker in relation to:

- charges;
- whether the sensitivities identified by the line area give rise to an exemption; and
- consultation with third parties.

The Legal Officers will redact exempt information from the documents and provide the proposed documents for release for consideration by the decision-maker and Line Area Contact Officer.

The decision-maker must confirm whether they agree with the recommendations.

Upon receipt of the decision-maker's response, the Legal Officers will prepare decisions on charges and consultation (if applicable) for decision-maker's approval.

Once the decision-maker has approved, the FOI Contact Officer will:

- inform the applicant of any charges and third party consultations; and
- seek comments from third parties on the release of the documents in accordance with the relevant consultation provision of the FOI Act.

The Legal Officers will make recommendations to the decision-maker and Line Area Contact Officer on the release of documents subject to consultation once responses have been received from third parties.

The FOI decision

- The Legal Officers will prepare a draft decision letter.
- The decision-maker makes the decision.
- The FOI Contact Officer will notify the applicant of the decision.

The Legal Officers will prepare a draft decision for the decision-maker setting out the exemptions identified during processing and explaining how they apply to the relevant documents.

The decision-maker provides the Legal Officer and FOI Contact Officer with a copy of the signed decision letter.

The FOI Contact Officer will email the decision letter and documents to the applicant.

FOI contact info:

s22 [redacted] FOI Contact Officer (02) 6274 2098

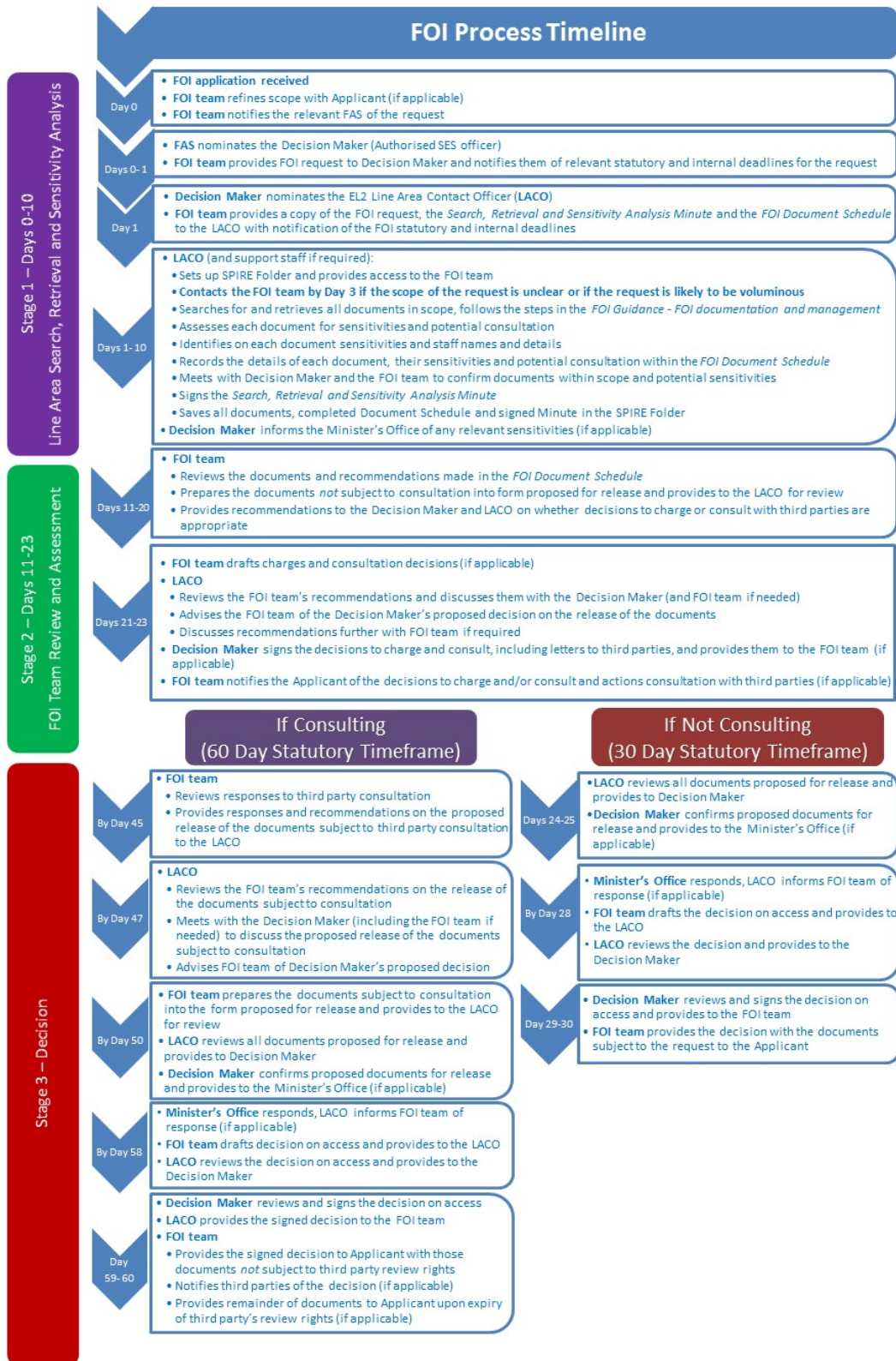
FOI@environment.gov.au

You can find related FOI guidance on the General Counsel Branch FOI [intranet page](#).

Please note that the information contained in this FOI Guidance is provided to Departmental staff for general information only. It is not legal advice and should not be relied upon as if it was legal advice. If you require specific legal advice about an issue, please contact the General Counsel Branch.

Last updated on **30 November 2018**.

Flowchart



FOI Process Timeline

Stage 1 – Days 0-10
Line Area Search, Retrieval and Sensitivity Analysis

Day 0

- FOI application received
- FOI team refines scope with applicant (if applicable)
- FOI Contact Officer notifies the relevant FAS of the request and requesting a decision-maker be nominated

Days 0-1

- FAS nominates the decision-maker (authorised SES officer)
- FOI Contact Officer notifies decision-maker of FOI request, the relevant statutory and internal deadlines for the request, and provides the *Search, Retrieval and Sensitivity Analysis Minute* and the *FOI Document Schedule*

Days 1-10

- Decision-maker nominates the Line Area Contact Officer (LACO) (usually EL2)
- FOI team discusses scope with LACO. If practical refusal reason exists, draft notice for decision-maker and action request consultation process (if any).
- LACO (and support staff if required):
 - Sets up SPIRE Folder and provides access to the FOI team
 - Contacts the FOI team by Day 3 if the scope of the request is unclear or if the request is likely to be voluminous
- Confirms scope with decision-maker before commencing searches
- Searches for and retrieves all documents in scope, follows the steps in the *FOI Guidance - FOI documentation and management*
- Assesses each document for sensitivities and potential consultation
- Identifies on each document sensitivities and staff names and details
- Records the details of each document, their sensitivities and potential consultation within the *FOI Document Schedule*
- Signs the *Search, Retrieval and Sensitivity Analysis Minute*
- Saves all documents, completed Document Schedule and signed Minute in the SPIRE Folder and provides to FOI team
- Decision-maker meets with the LACO and the FOI team to confirm documents within scope and potential sensitivities
- Decision-maker informs the Minister's Office of any relevant sensitivities (if applicable)

Days 11-20

- FOI team
 - Reviews the documents and recommendations made in the *FOI Document Schedule*
 - Actions consultation with PM&C on Cabinet documents (if required)
 - Provides recommendations to the decision-maker and LACO on whether decisions to charge or consult with third parties are appropriate, along with draft decisions to charge and / or consult (as required)

Days 21-23

- Decision-maker, if applicable, signs decision to charge and consult, including letters to third parties, and provides to FOI team
- FOI team notifies applicant of decisions to charge and / or consult and actions third party consultation (if applicable)
- FOI team, if not consulting, prepares documents into form proposed for release and provides recommendations and documents to LACO to review
- LACO, if not consulting:
 - Reviews the FOI team's recommendations and discusses them with decision-maker (and FOI team, if needed)
 - Advises FOI team of the decision-maker's proposed decision on the release of documents not subject to consultation

Stage 2 – Days 11-23
FOI Team Review and Assessment

If Consulting
(60 Day Statutory Timeframe)

If Not Consulting
(30 Day Statutory Timeframe)

Stage 3 – Decision

By Day 45

- FOI team
 - Reviews responses to third party consultation
 - Prepares all documents into form proposed for release
 - Provides responses and recommendations on the proposed release of the documents to the LACO to review

Days 24-25

- FOI team drafts decisions on access and provides to the LACO along with documents proposed for release
- LACO reviews all documents proposed for release and provides to decision-maker
- Decision-maker confirms proposed documents for release and provides to the Minister's Office (if applicable)

By Day 47

- LACO
 - Reviews the FOI team's recommendations on the release of the documents
 - Meets with the decision-maker (including the FOI team if needed) to discuss the proposed release of the documents
 - Advises FOI team of decision-maker's proposed decision

By Day 28

- Minister's Office responds, LACO informs FOI team of response (if applicable)
- LACO reviews the decision and provides to the decision-maker

By Day 50

- FOI team drafts decisions on access and provides to the LACO along with documents proposed for release and provides to the LACO for review
- LACO reviews all documents proposed for release and provides to decision-maker
- Decision-maker confirms proposed documents for release and provides to the Minister's Office (if applicable)

Day 29-30

- Decision-maker reviews and signs the decision on access
- LACO provides the signed decision to the FOI team
- FOI team provides the applicant the decision with the documents subject to the request

By Day 58

- Minister's Office responds, LACO informs FOI team of response (if applicable)
- LACO reviews the decision on access and provides to the decision-maker

Day 59-60

- Decision-maker reviews and signs the decision on access
- LACO provides the signed decision to the FOI team
- FOI team
 - Provides the signed decision to applicant with those documents not subject to third party review rights
 - Notifies third parties of the decision (if applicable)
 - Provides remainder of documents to applicant upon expiry of third party's review rights (if applicable)



FOI EXEMPTIONS - CABINET DOCUMENTS AND DELIBERATIVE MATTER

Cabinet documents and deliberative matter are exempt from production under FOI.

Cabinet documents include documents submitted to Cabinet, ministerial briefs on Cabinet matters, and other documents that would reveal Cabinet deliberations.

Deliberative matter is information relating to opinion, advice, recommendation, consultation or deliberation which has been created as part of the deliberative processes of Government. To be exempt from release under FOI, the information must not only be deliberative but it must also be contrary to the public interest to release it.

A decision-maker must consider the [FOI Guidelines](#) in applying an exemption.

In preparing advice to Government or preparing related documents for internal use, it is important to have appropriate regard to whether that material is appropriately exempt from release under the *Freedom of Information Act 1982*. Understanding the scope of the Cabinet documents and deliberative matter exemptions can assist you in this process.

Cabinet documents exemption (section 34 of the FOI Act)

This exemption allows agencies not to produce Cabinet documents. It is a complete exemption, and does not require the decision-maker to show that the exemption is in the public interest.

What are Cabinet documents?

Cabinet documents include originals, drafts, copies or extracts of:

- documents submitted to Cabinet, or brought into existence for the purpose of submission, and ministerial briefs about the issues covered by the relevant Cabinet process;
- Cabinet records;
- documents that would reveal Cabinet deliberations that have not already been disclosed, including copies of extracts of Cabinet documents; and
- Cabinet committee documents.

Even if a document falls into these classes, it is not exempt if the information consists of **purely factual material**, unless the disclosure of the information would reveal a Cabinet deliberation or decision that has not been officially disclosed.

A document is not an exempt Cabinet document merely because it is attached to these kinds of documents. However, the attachment itself may be an exempt document. For example, an attachment not prepared for the purpose of being provided to Cabinet may not be exempt.

Sensitive documents that canvass policy options that might be taken to Cabinet may not be exempt using this exemption, but they may be exempt under the **deliberative matter exemption** (see below).

The Department must consult the Department of the Prime Minister and Cabinet before applying the Cabinet documents exemption. It will check whether the documents relate to an actual Cabinet process, which can include processes where no Cabinet discussion or decision eventuated. If the documents do not relate to such a process, then it will not agree to the exemption being used.

Deliberative matter exemption (section 47C of the FOI Act)

This exemption allows agencies not to produce material containing deliberative matter. It is not a complete exemption, and the decision-maker must show that the exemption is in the public interest.

What is 'deliberative matter'?

Deliberative matter is information which is, or relates to, opinion, advice recommendation, consultation or deliberation, and which has been created as part of the deliberative (or 'thinking') processes of the Department, the Minister or the Government more broadly.

Deliberative matter does not include:

- purely factual information;
- finalised reports of internal or external scientific or technical experts; or
- the record of an administrative decision or a formal statement of the reasons for an administrative decision.

The public interest test

To be exempt from release as deliberative matter, information must not only be deliberative but it must also be contrary to the public interest to release it. This is called a 'conditional exemption'.

It is not enough for the decision-maker to simply decide that there is no public interest in releasing the document: for it to be exempt it must be against the public interest to disclose the information. This requires the decision-maker to decide where the balance of the public interest lies.

The FOI Act is premised in favour of the release of Government information. If the deliberative matter exemption is to be applied, then the decision-maker must identify a clear and valid public interest basis for withholding the document in question from release.

To apply the public interest test, the decision-maker must first take into account the factors in the FOI Act that suggest that release is required. These are whether disclosure would:

- promote the objects of the FOI Act, which are that release of information is done to promote Australia's representative democracy by contributing towards the following:
 - increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
 - increasing scrutiny, discussion, comment and review of the Government's activities.
- inform debate on a matter of public importance;

- promote effective oversight of public spending; and
- allow a person to access his or her own personal information.

The decision-maker must then consider whether there are public interest factors that outweigh these considerations.

In doing that, the decision-maker must not take into account the following:

- access to the document could result in embarrassment to the Australian Government or the Norfolk Island Government, or cause a loss of confidence in the Australian Government or the Norfolk Island Government;
- access to the document could result in any person misinterpreting or misunderstanding the document;
- the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- access to the document could result in confusion or unnecessary debate.

Examples of documents containing deliberative matter

Deliberative matter is typically contained in the following types of documents, to the extent that they provide contain that deliberative matter:

- documents, including briefings, setting out policy ideas and options for consideration by the Government;
- incoming government briefs;
- documents, including reports, file notes and draft meeting minutes, setting out analysis, ratings and recommendations about whether to make a particular decision on agency activity;
- documents containing analysis of regulatory requirements;
- draft documents and reports;
- other documents (including email and text exchanges) that discuss possible ways to deal with agency responsibilities.

Examples of documents unlikely to contain deliberative matter

The following documents will typically not contain deliberative matter:

- published general information or previously public information;
- information required to be published by statute or required to support a specific statutory decision;
- general descriptions of programmes and factual information about programmes;
- the decision or conclusion reached at the end of a deliberative process; and
- documents recording decisions.

What other exemptions might be relevant?

In framing documents, you should consider the full range of exemptions that may be relevant, depending on the issue being covered. Conditionally exempt information is subject to the public interest test.

International relations (section 33 of the FOI Act): exempt where release would reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth or would divulge information or matters communicated to the Commonwealth in confidence by or on behalf of a foreign government or international body.

Law and safety (section 37 of the FOI Act): exempt where release would prejudice current investigation or proper administration of the law or would reveal information about confidential informants, endanger life or physical safety, prejudice a fair trial, disclose methods of law enforcement or prejudice methods of protection of the public.

Legal professional privilege (section 42 of the FOI Act): exempt where specific information in a document sets out confidential legal advice or is otherwise privileged from production in court proceedings. General Counsel Branch should be consulted about any potential disclosure of legal advice.

Commonwealth-State relations (section 47B of the FOI Act): conditionally exempt where release would, or could reasonably be expected to, damage relations between the Commonwealth and a State or Territory or would divulge information communicated by the Commonwealth in confidence to a State or Territory.

Operations of an agency (section 47E of the FOI Act): information about the operations of an agency is conditionally exempt if release would, or could, reasonably be expected to:

- prejudice the effectiveness of procedures or methods for the conduct of tests or prejudice the attainment of the objects of particular tests; or
- have a substantial adverse effect on the management or assessment of personnel or on the proper and efficient conduct of the operations of the agency.

Trade secrets and business affairs (sections 47 and 47G of the FOI Act): exempt if the information is a trade secret or has commercial value which would be destroyed or diminished by release. Information about business affairs is conditionally exempt if release would:

- have an unreasonable adverse effect on business or professional affairs; and
- prejudice future supply of information to the Government.

To be applied, the business affairs exemption requires consultation with the relevant business, which has review rights.

Personal information (section 47F of the FOI Act): personal information is conditionally exempt if release would involve an unreasonable disclosure of personal information. To be applied, this exemption requires consultation with the affected person, who has review rights.

For more detail on how these exemptions are to be applied, see the [FOI Guidelines](#) or consult the FOI Team in General Counsel Branch.

Key contacts:

§22 (Senior Legal Officer - FOI)	6274 §22
§22 (FOI Coordinator)	6274 2098

FOIcontactofficer@environment.gov.au

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Last updated on **4 August 2016**.



FOI ACT PROVISIONS

Section 34 – Cabinet documents

General rules

- (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.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.
- Note:** *However, the attachment itself may be an exempt document.*
- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
- (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

Section 47C – Public interest conditional exemptions—deliberative processes

General rule

- (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.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.
- Note:** *An agency must publish its operational information (see section 8).*
- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.
- Note:** *Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).*

Section 11B – Public interest exemptions - factors

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) 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 of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.



FOI CONDITIONAL EXEMPTION: COMMONWEALTH-STATE RELATIONS (SECTION 47B)

This guidance note is provided to assist departmental officers in considering whether a document, or part of a document, may be conditionally exempt under section 47B of the *Freedom of Information Act 1982 (Cth)* (the Act).

The conditional exemption

Section 47B of the Act conditionally exempts a document where disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State or Territory; or
- would divulge information or matter communicated in confidence between the Commonwealth and a State or Territory.

There are a number of things that a decision maker should consider when determining whether or not section 47B applies to a document. These factors are set out below.

Relevance of the author of the document

The document does not have to have been supplied or written by the Commonwealth or the State or Territory to fall within this exemption. The content of the document (and potentially the reason or circumstances why the document was created) is the deciding factor, rather than the originator's identity.

Cause damage to Commonwealth-State relations

Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy;
- adversely affecting the administration of a continuing Commonwealth-State project;
- substantially impairing (but not merely modifying) Commonwealth-State programs;
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships; or
- impairing or prejudicing the flow of information to and from the Commonwealth.

Decision makers should also consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information; or
- adversely affect the development of future Commonwealth-State projects.

The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse.

Decision makers should also consider whether all or only some of the information in the requested documents would damage Commonwealth-State relations if disclosed. The exemption should not be applied in a blanket manner to a class of documents.

Damage to be reasonably expected

There must be real and substantial grounds for expecting the damage to occur which can be supported by evidence or reasoning. There cannot be merely an assumption or allegation that damage may occur if the document were released.

Information communicated in confidence

When assessing whether the information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication.

The circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine or required;
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information; and
- how the information was subsequently handled, disclosed or otherwise published.

The exemption will not apply if the documents relate to routine or administrative matters or documents that are already in the public domain.

Consultation with a State

Consultation between the Commonwealth and a State may be required in order to discuss concerns with disclosure. General Counsel Branch will advise further on consultations as required.

Applying the public interest test

Once the document has been determined to be conditionally exempt under section 47B the decision maker must apply the public interest test, meaning access must be given unless in the circumstances giving access would be contrary to the public interest. In order to support an exemption, decision makers will need to be able to explain why disclosure of the particular document or information would be contrary to the public interest.

Key contacts:

s22 (FOI Contact Officer)	6274 s22
s22 (Senior Legal Officer)	6275 s22
s22 (Senior Legal Officer)	6274 s22

FOIcontactofficer@environment.gov.au

Please note that the information contained in this FOI Guidance Note is provided to Departmental staff for general information only. It is not legal advice and should not be relied upon as if it was legal advice. If you require specific legal advice about an issue, please contact the General Counsel Branch.

Last updated on 4 July 2019

To: FAS

CC: FOI inbox, Margaret Tregurtha, Kate Lalor, relevant PLOs from either RE&L or P&O teams, Media, s22

, Deputy Secretary, Secretary, Secretary EO, etc

NOTE: With ESD requests please include ESD Cood and s22 (EO for ESD)

Dear XXXX

On XXXX, the Department received the attached request from XXXXX under the *Freedom of Information Act 1982*. The request seeks:

[Item 1] XXXXXXXX

[Item 2] XXXXXXXX

We understand that you are the head of the Division likely to hold the majority of the documents subject to the request (please let us know immediately if this is not the case). Consistent with our usual procedures, could you please nominate:

- an appropriate SES officer to be the decision-maker for the request; and
- (if you deem appropriate) a person experienced in FOI to mentor the decision-maker.

It is requested that you take these actions by COB [tomorrow][this coming Monday] [NEXT WORKING DAY DATE].

Please let us know who you nominate, so that we can so that we can immediately start working with them and their team to process this request.

As you are likely aware, the statutory timeframe commenced upon receipt of the request. As a result, we will need to provide the applicant with a decision on the request by XXXX (pending any extension for consultation or payment of charges).

It is the decision-maker's responsibility to ensure that the Minister's Office are informed of any issues that may arise during this request that would affect their interests.

If you would like to discuss the request or FOI processes generally, feel free to contact the FOI Contact Officer.

Kind regards

To: Decision-maker (and line area contact if known)

CC: FOI inbox and LO/SLO

Dear XXXXXX

You have been nominated as the decision maker for the **attached** request received from XXXXX under the *Freedom of Information Act 1982*.

The first step you need to take in progressing this request is to appoint a Line Area Contact Officer (**LACO**), who will have the primary responsibility for ensuring that the tasks below are completed by the specified date. The LACO must be employed in an Executive Level position, preferably at the EL2 level.

Could you please appoint the LACO and advise of any supporting staff by **[NEXT WORKING DAY DATE]**.

[IF ADVISORS APPOINTED] The legal advisors for this request are **[LEGAL ADVISOR NAMES]**. Feel free to contact them with any questions you or your team may have.

Once you have appointed your team, it would be great if they could contact the General Counsel Branch before taking any action so that we can discuss what they'll need to do to progress this request - we understand it can be a bit confusing at first.

The statutory deadline for the request is currently **[STATUTORY DEADLINE DATE]**.

So that we can meet this deadline comfortably, could you please ensure that, the LACO and supporting staff have completed the attached *Search, Retrieval and Sensitivity Analysis Minute* and the tasks specified within it by **[DATE 10 DAYS AFTER RECEIPT OF REQUEST]**.

These tasks are to:

- Search for and retrieve the documents subject to the request
- Prepare the documents consistent with the processes in the attached *FOI Processing Guide* (including removing duplicates, converting the documents to PDF and providing them with appropriate filenames)
- Identify name/staff details and other sensitivities on the documents – either electronically using Adobe or by highlighting relevant sections
- Complete the attached FOI document schedule, which includes advising on any potential sensitivities within the documents (and consultation if required)
- Confirm those recommendations with yourself, to ensure that the advice is consistent with your views
- Provide the documents and advice captured within the document schedule to the FOI team.

The attached Line Area Checklist may be of assistance to those staff undertaking the above tasks. We have also attached the FOI process flowchart, which provides an overview of how the request will progress.

If the request appears to be excessively large, let us know immediately – we can assist with making the request smaller, but our opportunity to do so effectively is limited.

Could you please ensure that the Minister's Office are informed of any issues that may arise during this request that would affect their interests.

If you require any assistance or would like to discuss the FOI process please do not hesitate to contact me on (02) 6274 2098 or the FOI Contact Officer at foi@environment.gov.au.

Kind regards

FOI Contact Officer

To: Applicant
Subject: FOI XXXXXX – Acknowledgement of request

Dear XXXXXX

Freedom of Information Request no. XXXXXX

The Department of the Environment and Energy (the Department) acknowledges receipt of your request under the *Freedom of Information Act 1982* (FOI Act) which seeks:

[INSERT SCOPE OF REQUEST]

The Department is required to process valid requests within 30 days after the day a request was received. This 30 day processing period may be extended under certain circumstances, for example, where the Department decides it reasonable to consult with third parties. If the processing period is extended, you will be informed of the extension and the reasons for it.

The statutory deadline for providing a decision on this request is currently XXXX.

The Department makes two assumptions that affect the scope of the request. These are set out below.

It is the usual practice of the Department:

- not to disclose the personal information of junior officers or the personal contact details of senior officers of the State or Federal governments (including those of the Department). The names of senior officers will generally be released. Your request will be processed on the assumption that you do not intend to capture these details within its scope.
- not to release duplicates of any document captured within the scope of the request. Further, where two documents fall within the scope one differs from the other only with respect to minor editorial changes (such as spelling or grammar corrections), only the later version of the document will be treated as within scope. Your request will be processed on the assumption that you do not intend to capture duplicates or documents that the Department considers duplicates (as per the above explanation) within the scope of your request.

Please inform us if you do not agree to the request being processed by the Department on the above assumptions.

Please note that information released under the FOI Act may later be published online on our disclosure log.

We will contact you using the email you provided. Please advise if you would prefer us to use an alternative means of contact.

If you have any questions, please contact the FOI Contact Officer on (02) 6274 2098.

Regards



FOI REQUEST [18XXXX] - [TITLE OF REQUEST]
 SEARCH, RETRIEVAL AND SENSITIVITY ANALYSIS MINUTE

Applicant: [APPLICANT NAME][on behalf of [ORGANISATION NAME]]

To: FOI@environment.gov.au

As the Line Area Contact Officer for this request, I confirm that:

- the searches identified below have been conducted in respect of this request;
- the searches were conducted of *all* areas within the Department that would reasonably hold documents relevant to the request;
- the details of each document, any sensitivity identified within them and potential third party consultation has been recorded in the *FOI Document Schedule* at Attachment B, in the form set out in *FOI Processing – Documentation and management*;
- all documents identified within the *FOI Document Schedule* are within the scope of the request;
- the documents have been prepared consistent with the guidance in *FOI Processing – Documentation and management* (duplicates removed, document files renamed using prescribed naming conventions and documents converted to PDF format) and placed within the relevant SPIRE folder for the request;
- the Decision Maker has agreed with my recommendations on which documents are within scope, the sensitivities that arise within them and proposed consultation with external parties; and
- if the request has been identified as sensitive - the Minister’s Office has been informed of relevant sensitivities.

Electronic document searches	Completed	Not necessary
Searches have been conducted of:		
• files held in SPIRE	<input type="checkbox"/>	<input type="checkbox"/>
• personal email accounts of relevant staff	<input type="checkbox"/>	<input type="checkbox"/>
• shared, group and/or team email accounts	<input type="checkbox"/>	<input type="checkbox"/>
• files held in PDMS	<input type="checkbox"/>	<input type="checkbox"/>
• files held in Slipstream	<input type="checkbox"/>	<input type="checkbox"/>
• shared computer drives	<input type="checkbox"/>	<input type="checkbox"/>
• other (describe): _____	<input type="checkbox"/>	<input type="checkbox"/>

Physical document searches	Completed	Not necessary
Searches have been conducted of:		
• official physical files relevant to the request	<input type="checkbox"/>	<input type="checkbox"/>
• documents held by the Records Management Unit / Secondary Storage	<input type="checkbox"/>	<input type="checkbox"/>
• other (describe): _____	<input type="checkbox"/>	

[IF NO DOCUMENTS FOUND]After conducting the above searches, the Department was not able to identify any documents that fell within the scope of the request. This lack of documents is due to **[PROVIDE BRIEF REASONS WHY THE DEPARTMENT DOES NOT HOLD RELEVANT DOCUMENTS]**.

Note: This information will be used to help the FOI team draft a section 24A decision (documents do not exist or cannot be found). Generally speaking, if an applicant is informed of the reasons why certain documents do not exist, or are not in the possession of the Department, they are less likely to seek review of a decision to that effect.

As examples of information you could provide to explain why the Department does not hold the documents sought:

If a request sought advice that the Department provided on a certain matter, and you found that the Department did not provide that advice, you could include words to the effect of "*the Department having not provided any advice on this matter*". You could also provide additional comments as to why this was the case, such as that the matter is not within portfolio responsibilities.

If a request sought documents that were known to have been destroyed in accordance with records management policies, you could include words to the effect of "*the Department destroyed the documents sought in 2016, consistent with the Archives Act 1983*". Note that this finding would require proof that the documents existed, and record that they were destroyed.

[LINE AREA CONTACT NAME]

[POSITION]

[BRANCH]

[DATE]

Attachments:

- A. FOI Processing – Documentation and management
- B. Completed FOI Document Schedule



FOI DOCUMENTATION AND MANAGEMENT

This guidance note sets out steps line areas need to take to ensure the efficient management of FOI document sets.

It should be read in conjunction with the overarching guidance for processing of FOI requests available on our [FOI intranet page](#).

Note: Take care to read this guide carefully, as for each request the Line Area Contact Officer will need to confirm, by signing the *Search, Retrieval and Sensitivity Analysis Minute*, that the documents subject to the FOI request have been processed consistent with the methods set out in this guide.

Overview of steps to prepare documentation

After you have gathered all of the documents that fall within the scope of an FOI request, they will likely not be arranged in any particular order, and may be confusing to discuss and prepare for the decision maker's consideration.

The easiest way to address this issue is to take the following steps in order:

- Step 1: Remove all duplicates subject to the scope of the request
- Step 2: Allocate document numbers to the in-scope documents
- Step 3: Provide each document with the correct filename
- Step 4: Convert documents to PDF
- Step 5: Identify sensitivities and staff personal information in documents
- Step 6: Record the details of each document (item number, document number, date, page count and description) in the Document Schedule
- Step 7: Record sensitivities and third party consultation for each document in the Document Schedule

This Guidance Note will explain how to undertake each step.

Step 1: Remove all duplicates subject to the scope of the request

Rule

Any document that the Department considers a duplicate should be removed from the SPIRE document set. They do not need to be recorded within the document schedule, unless they form an attachment to another document. If this is the case, see "*Recording of duplicates in the Document Schedule*" above.

Why we do it

When the request was received by the Department, we notified the applicant that our usual practice is to consider duplicates outside its scope. This means that any document we

consider to be a duplicate should be removed from the SPIRE document set. We take this step so that the eventual decision is not made over the same document twice.

You will find that the removal of duplicates, particularly if the request includes a lot of emails, will substantially reduce the amount of documents that will need to be reviewed throughout the request, and in turn the time you'll need to work on it.

What does the Department consider duplicates?

The most common types of duplicates within FOI requests are:

- Email duplicates
- “True” duplicates
- Drafts of other documents within the SPIRE document set, with only minor spelling or grammatical differences between them

What documents are not considered duplicates?

There are other types of documents that may appear at first glance to be duplicates, but they are not duplicates for FOI purposes, and should remain within scope of the request and SPIRE document set. For example:

- A document that duplicates material stated elsewhere in request
- Signed vs unsigned documents
- Drafts of other documents within the scope of a request, with differing policy positions

Duplicates Quick Guide

Type of duplicate	Include in SPIRE document set?
Email duplicates	No, unless they have an attachment
“True” duplicates	No
Documents that duplicate the content of another document in part (that are not emails)	Yes
Signed vs unsigned documents	Yes
Drafts of documents	If the only difference between the two documents are minor editorial changes (such as spelling or grammar corrections), only the latter draft should be considered within scope. If the documents have significant <i>policy</i> changes between them, both should be considered within scope.

Each of these types of duplicates will be discussed in more detail below.

Email duplicates

Rule

If you identify an “Email Duplicate” within the scope of the request, remove it from the SPIRE document set unless it has an in-scope attachment.

What is an email duplicate?

An email duplicate is the most common type of duplicate you encounter in a request. They are created where two or more people email each other, and each response creates a new document which contains the prior email within it.

Example

Mr X emails Mr Y, creating Document 1. Mr Y responds, creating Document 2.

Document 1

From: Mr X
Sent: Friday, 4 May 2018 3:09 PM
To: Mr Y <Mr Y@environment.gov.au>
Subject: [SEC=UNCLASSIFIED]

Hi Mr Y

How are you?

Cheers
Mr X

Document 2

From: Mr Y
Sent: Friday, 4 May 2018 3:10 PM
To: Mr X <Mr.X@environment.gov.au>
Subject: RE: [SEC=UNCLASSIFIED]

Hi Mr X

I'm great thanks for asking.

Mr Y

From: Mr X
Sent: Friday, 4 May 2018 3:09 PM
To: Mr Y <Mr Y@environment.gov.au>
Subject: [SEC=UNCLASSIFIED]

Hi Mr Y

How are you?

Cheers
Mr X

In the above example, Document 1, which only contains the email from Mr X, would be out of scope, and removed from the SPIRE document set, because it is duplicated in Document 2.

"True" duplicates

Rule

If you identify a "True" duplicate within the scope of the request, remove it from the SPIRE document set unless it has an in-scope attachment.

What is a "True" duplicate

A "True" duplicate is the easiest type of duplicate to identify. It is a document that is exactly the same in every way to another document within scope, including their content and date that they were authored.

Drafts of documents

Rule

Where two drafts of the same document fall within the scope of the request, and they differ from each other only with respect to minor editorial changes (such as spelling or grammar corrections), only the later version of the document will be treated as within scope.

This rule only applies to documents that are, in their entirety, a draft of another document. If the draft in question forms only a part of a document (for example, if an extract of a draft document was expressed in an email), it would remain in scope.

What is a “minor editorial change”?

A “minor editorial change” is a change to a document that does not substantially change the arguments or reasons provided within it. This can include corrections to spelling and grammar, changes to the style and formatting of the document, and additions which do not change the substance of the document.

A “minor editorial change” does not include changes to policy positions or significant alterations which change the substance of the document.

Document that duplicates material stated elsewhere in request

Rule

If a document duplicates material stated elsewhere in the request, keep it in the SPIRE document set unless it is a “True duplicate” or “Email duplicate”.

What types of documents does this include?

These types of documents usually take the form of regular reports that provide summaries of certain matters, and the matters do not significantly progress from month-to-month. As a result the summary can be similar, if not exactly the same as the previous month.

Although this is technically a duplication of material, the date each document was authored will be different, and therefore will not be considered a duplicate for the purposes of an FOI request.

These documents should be considered within scope, and should be kept in the SPIRE document set.

Signed vs unsigned duplicate documents

Rule

If a document is a duplicate of another document within the scope of the request, but is a signed or unsigned version of it, keep it in the SPIRE document set unless it is a “True duplicate” or “Email duplicate”.

Why are these not considered duplicates?

The signed and unsigned documents have different creation dates – with the unsigned document being created upon its drafting, and the second document being created upon the signature being placed upon it.

Recording presence of duplicates in the Document Schedule

Rule

If a document has an attachment, and that attachment is duplicated elsewhere in the request, do not include the document in the SPIRE document set, but make a note of it in the Document Schedule, identifying which attachment has been removed, and which in-scope document it duplicates.

Why we do it

Ordinarily the presence of duplicates will not be recorded within the Document Schedule because they are not considered in-scope of the request and will be removed from the SPIRE document set. However, it is helpful to record that a duplicated document has been removed if it is an attachment to another, in-scope document. This will help explain to the applicant why certain documents have not been included.

Example

Let's say we have two documents within the scope of a request. Document 1 is an email with the subject line "Fwd: Decision EPBC 9999/9999", and that email had an attached decision with the filename "EPBC 9999/9999.pdf".

If Document 2 is that same decision (a "True" duplicate), you could opt not to include the email attachment within the scope of the request, but you would note in the Document Schedule that the attachment formed a duplicate of Document 2.

See example extract from the Document Schedule below:

ITEM	Doc No.	Date	Number of pages	Description	Sensitivities/Possible exemptions
1	1	17/02/2018	1	Email Fwd: Decision EPBC 9999/9999	Attachment "EPBC9999-9999.pdf" duplicate of Document 2
1	2	17/02/2018	5	Decision Brief EPBC 9999/9999	

Note: In the above example, you could instead keep the attachment to Document 1 within the scope of the request (becoming Document 1a – see guidance on document numbers below), and remove Document 2 from the SPIRE document set. Document 2's former

presence would **not** need to be recorded with this approach, because it did not form an attachment to an in-scope document.

Step 2: Allocate document numbers to the in-scope documents

Why do we use document numbers?

We allocate documents number in FOI requests so that we can refer to them quickly during the FOI process and in the decision granting access to them.

How to allocate document numbers

Note: In practice you'll likely allocate document numbers at the same time you provide them with the correct filenames, because the filenames include the Document number.

The document numbers begin at "1" and continue to rise sequentially until all documents in scope are accounted for.

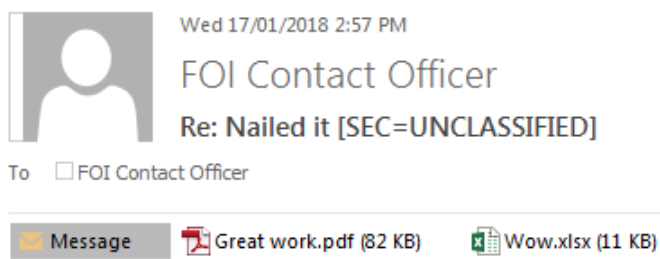
If a document has an attachment (for example an email or a brief), the attachment will share the same *numerical* number as the "head" document, but will have an *alphabetical* suffix starting with "a" and sequentially rising through the alphabet until all attachments are accounted for. The alphabetical suffix begins from "a" for every new document number. Each attachment to a document will share the same number so that we can quickly identify which is the "head" document, and what documents were attached to it.

For clarity, if there were two documents (Document 1 and Document 2), each bearing attachments:

- The attachments for Document 1 will bear the document numbers "1a", "1b", "1c" etc.
- The attachments for Document 2 will bear the document numbers "2a", "2b", "2c" etc.

Example

For example, if Document 1 was the following email:



Awesome work mate – you absolutely smashed that decision today.

Document 1 would be the email itself.

"Great work.pdf" would become Document 1a.

"Wow.xlsx" would become Document 1b.

Note: The filename of a document will rarely be the actual "Description" of the document included in the Document Schedule.

If, in this example, the file “Great work.pdf” was the approval decision, and “Wow.xlsx” was a comparison table of approvals in the area, the Document Schedule would be filled out as follows:

ITEM	Doc No.	Date	Number of pages	Description
1	1	17/01/2018	1	Email Subject: Nailed it
1	1a	25/12/2017	4	Approval Decision EPBC 2017/5999
1	1b	2/01/2018	2	Comparitive Table Approvals in local area

Step 3: Provide each document with the correct filename

Document naming convention

The documents need to be titled using the following format:

“[FOI NUMBER] – Document [NUMBER] – Original filename”.

For example, if the email in the above example were Document 1 in FOI 170217, its filename would be:

“FOI 170217 – Document 1 – Re: Nailed it”

Note: By default, emails have their subject line as their file name.

For clarity, the Document Number in the filename is the same number Document Number that you have listed against that document in the completed Document Schedule.

Further if an email has an attachment, the attachment shares the Document Number with the email, but adds a letter, indicating that it is an attachment.

For example, the attachments to Document 1, the email with subject line “Re: Nailed it”, would be named as follows:

“FOI 170217 – Document 1a – Great work.pdf”

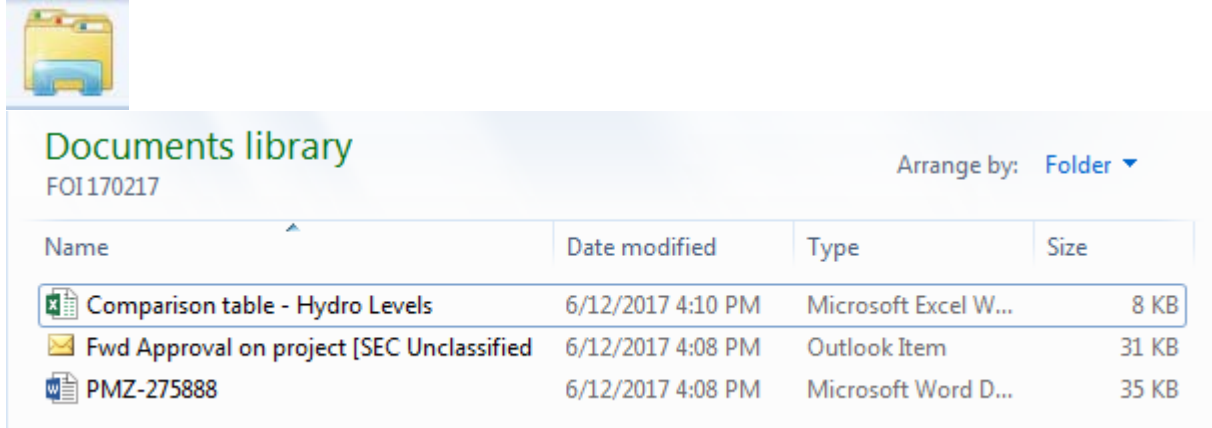
“FOI 170217 – Document 1b – Wow.xlsx”

Process of allocating numbers and providing filenames

We find it easiest to undertake Steps 2 and 3 at the same time in the following way.

1. Place the Documents relevant to the request in a folder you can view from Windows Explorer. This can be done on your Desktop or in the SPIRE document set.

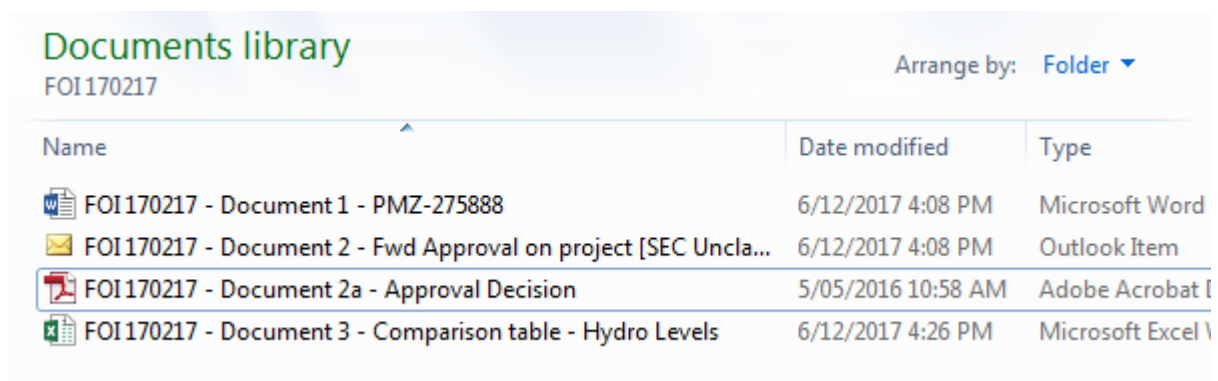
If documents are on your Desktop / in a shared drive, click on this logo in your taskbar:



If documents are in a SPIRE document set, switch to “Library” tab and then click “Open with Explorer” (as shown below)



2. Provide each with the appropriate filenames, allocating the Document number as you go.



Note that in the above example:

- the order of the documents changed when renamed with their document numbers; and
- a new document was introduced – 2a. This document was an attachment to an email, so is separated and listed with the appropriate Document Number for attachment 2a.

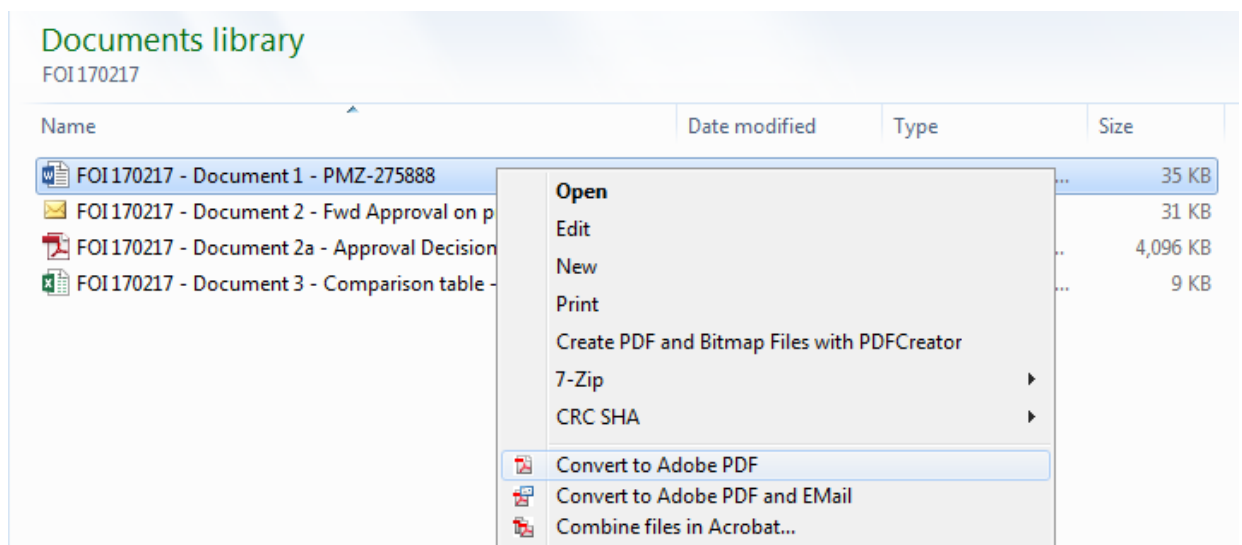
Step 4: Convert documents to PDF

All documents subject to the scope of an FOI will need to be converted into PDF, because electronic redactions can only be applied to them in that format.

The easiest way to convert the documents into PDF is through Windows Explorer. Place the Documents relevant to the request in a folder you can view from Windows Explorer and follow the below steps.

For all documents except emails

Right click on the document that you wish to convert to PDF. A drop-down menu should appear that includes the option "Convert to PDF". After it is chosen, follow the on-screen prompts.

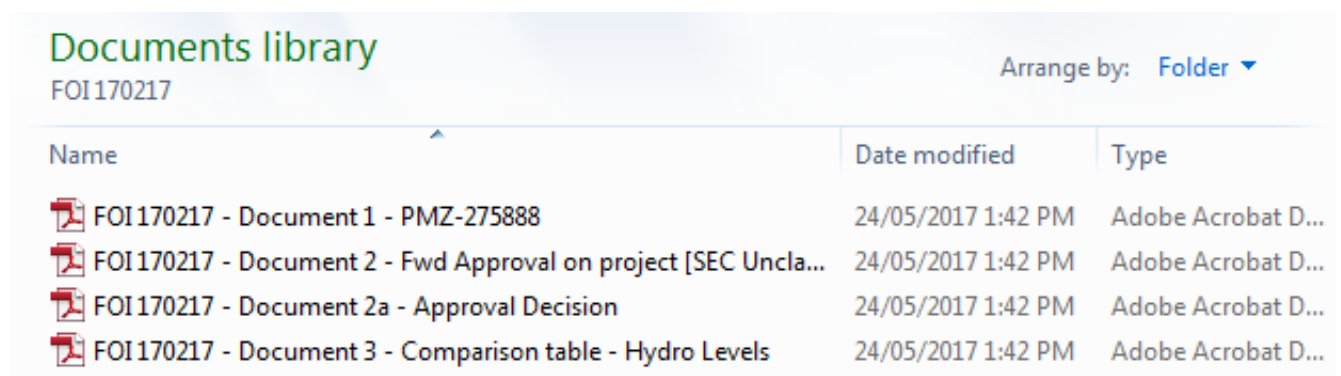


For emails

The process is slightly different because the "Convert to PDF" function will lose the filename you gave to the email defaulting it to "Memo Style". You can address this by copying the filename prior to clicking "Convert to PDF".

When you are prompted to save the PDF'd email, paste the original filename into the "File name:" field.

When completed, your Document Schedule should look like:

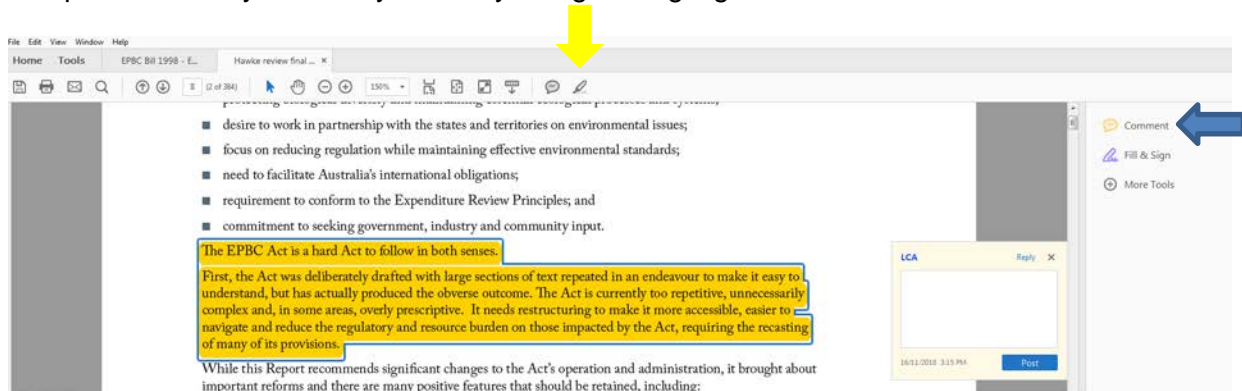


Step 5: Identify sensitivities and staff personal information in documents

On a document by document basis, identify:

- sensitivities in the document; and
- staff names / details that need to be redacted.

Our preference is you identify these by using the highlighter in Adobe Acrobat Reader.



Comments can be included by double-clicking the highlighted section or selecting 'Comment' on the right-hand side.

It is also possible to highlight on a hardcopy document and scan but please check the highlighted sections have scanned correctly before providing to General Counsel Branch (**GCB**).

Sensitivities

When identifying sensitivities in a document, think about what harm could flow from the release of the document.

This will assist GCB to streamline the process of giving you advice on exemptions and carrying out any necessary redactions.

Staff names / details

Using the highlighter in Adobe Acrobat Reader, identify staff names / details that need to be redacted.

GCB will only review the redaction of names / details to the extent there is a question of law or particular sensitivity that arises. Therefore, we are relying on input from line areas and LACOs to verify this has been done for each request.

Step 6: Record the details of each document (item number, document number, date, page count and description) in the Document Schedule

When you receive a request, the FOI team will provide the FOI Document Schedule to you. The fields that you'll need to complete are as follows:

**FOI Document Schedule – FOI XXXXXX - [TITLE OF FILE]
NOT TO PROVIDE TO APPLICANT**

Doc No.	Item No:	Date	Number of pages	Description	Sensitivities - What harm could flow from release of document	Proposed third party consultations
X	X	DD/MM/YYYY Y	X	TYPE OF DOCUMENT TITLE OF DOCUMENT/SUBJECT OF EMAIL	SPECIFIC SENSITIVITIES IN DOCUMENT (if any)	THIRD PARTIES WHOM HAVE REASONABLE GROUNDS TO OBJECT TO THE RELEASE OF THE DOCUMENT. If there are no sensitivities, there are no grounds to consult with third parties

The FOI Document Schedule also includes the fields “Third party response” and “Decision”. These are for exclusive use by the Legal Officers in GCB, and you don't need to complete them.

Document Number

This is the number that you allocated to each document in Step 2 above.

Item

If you receive a request that seeks multiple categories of documents, each category will be allocated an Item number. In the Document Schedule, write the Item number that correlates with the document.

If the document doesn't fall within one of the Items, it is likely not within scope of the request and should be removed from the Document Schedule. If the document falls within two or more Items, list all relevant Item numbers in the Document Schedule.

Example

For example, if you receive a request where the applicant was seeking:

[Item 1] *The decision on the approval.*

[Item 2] *Correspondence that discussed the decision after it was made.*

The decision itself would be numbered Item 1 in the schedule, whilst all correspondence would be numbered Item 2. The Document Schedule could be filled out as follows:

Doc No.	Item No:	Date	Number of pages	Description
1	1	25/12/2017	4	Approval Decision EPBC 2017/5999
2	2	4/01/2018	2	Email Subject: You made a decision on Christmas day?
3	2	5/01/2018	1	Email Subject: Your family called...where are you?
3a	2	5/01/2018	1	IMAGE Sadface.jpg

Note: The Document Number will continue to rise with each new document within scope, irrespective of its Item number.

Date

This is the date that the document was created in DD/MM/YYYY format.

This column in the spreadsheet will convert most date formats into the “DD/MM/YYYY” format, so in most cases you should be able to copy and paste the date from the document into the Document Schedule, and not need to manually input it.

If the document bears multiple dates, use the latest date on it. For example, if a document was drafted on one date, but signed at a later date, use the date it was signed.

If it is unclear when the document was created, make a reasonable estimate (to the nearest month) as to when it was created and record that in the Document schedule. If this is not possible, leave the area blank and make a note in the “Sensitivities – What harm could flow from release of document” column.

Number of pages

This is the number of pages within the scope of the request. We use this number to help inform the amount of charges issued for the request.

If you have a 30 page document, and only one page is within the scope of the request, the “Number of pages” is 1.

If only one paragraph on that page was within scope, the “Number of pages” will remain to be “1”.

Description

The “Description” field must be filled out in the following format:

TYPE OF DOCUMENT
TITLE OF DOCUMENT/SUBJECT OF EMAIL

Why do we use this type of formatting?

This description will be provided to the applicant upon decision on the request, so take care to use the above formatting. Deviating from it can introduce ambiguity as to which document you are referring to during the decision stage, and can introduce sensitive material into the schedule.

See example above at page 6.

Step 7: Record sensitivities and third party consultation for each document in the Document Schedule

Sensitivities

Use this column in the Document Schedule to record your advice on any sensitivities within a document. It should also be used to record whether material within the document is in scope of the request.

As a general rule, the Legal Officers are more interested in the potential harm that could flow from the disclosure of the document than what exemptions may apply. If you recommend that an exemption apply without background or evidence of harm, the Legal Officers will likely seek further information about why you think the exemption applies.

If you leave this area blank, the Legal Officers will assume that there are no sensitivities with the disclosure of the document, and recommend to release it in full, consistent with your recommendations.

Proposed third party consultations

Use this column in the Document Schedule to record your advice on what parties, outside of the Department, should be consulted regarding the disclosure of the document. You should include their name and contact details.

Note that the Department only has the right to consult with third parties if we consider that they could reasonably contend that their information is exempt (i.e. we have to be satisfied that the release of their information could reasonably damage them). It's not a matter of "asking permission" to release a document, but rather seeking further information as to how the disclosure of certain information could adversely affect them.

If we don't think that the release of the information could adversely affect them, for example, if the information is publicly available there is no need, or power under the FOI Act, to consult with that third party.

Need further help?

Contact the Legal Officers in the General Counsel Branch that have been allocated to your request or the FOI Contact Officer.

Other key contacts

s22 [redacted], FOI Contact Officer

6274 s22 [redacted]

FOI@environment.gov.au



SENSITIVITY ANALYSIS

The purpose of this document is to provide guidance to line areas when considering the sensitivities of documents that fall within the scope of an FOI request.

Decision-makers must have regard to the [FOI Guidelines](#) when performing a function or exercising a power under the FOI Act.

CONSIDERING THE SENSITIVITY OF A DOCUMENT

Identify the harm

Rather than focussing on possible exemptions that may apply to a document, the question to ask yourself is 'What is the risk of harm that could be caused if the information is disclosed?'

What is harm?

What will constitute harm depends on the context and content of the specific document. However, harm may result from the disclosure of a document that:

- contains legal advice;
- reveals Cabinet deliberations;
- was provided in confidence;
- would adversely affect an ongoing decision-making process; or
- would adversely impact a third party or a third party's business.

Irrelevant considerations

You cannot take the following into account when considering the harm:

- who the applicant is or their reasons for seeking access to the requested documents;
- that the author of the document was senior;
- that the release would cause:
 - embarrassment or loss of confidence in the Commonwealth;
 - people to misinterpret or misunderstand the document;
 - confusion; or
 - unnecessary debate.

What is not harm?

The following things will not automatically amount to harm:

- the document contains a business name;
- the document is the kind of document that is often sensitive, e.g. a compliance document or HR document;
- the document is marked sensitive or confidential;
- the document was considered in a decision;
- the document was not intended to be disclosed publicly;
- someone would suffer hurt feelings.

YOU HAVE IDENTIFIED SENSITIVITIES – WHAT NEXT?

Marking up the documents

If you consider harm could be caused by the disclosure of information, you should highlight the relevant sensitivities in the document and record this in the Document Schedule.

Details of how to do this are set out in the FOI Guidance – FOI Documentation and Management. The FOI Contact Officer would have provided a copy of this guidance when the request was sent to the decision-maker.

Legal recommendations

After you provide the documents and Document Schedule to GCB, the Legal Officers allocated to your request will review the documents and any sensitivities identified.

The Legal Officers will provide advice and recommendations about exemptions that may apply to documents and the public interest test.

Third party consultation

If the disclosure of the document would not cause harm to the third party, there are no grounds to formally consult under the FOI Act.

If the document contains:

- personal information;
- business information;
- information that originated from a State government; or
- information that could affect international relations

AND disclosure of that information could cause harm to the third party, there may be grounds to formally consult with that third party. GCB can provide advice about whether there are grounds to undertake third party consultation.

Formal consultation extends the timeframe to respond to the request by 30 days.

Third parties have appeal rights under the FOI Act if the Department decides to release and they don't agree with the decision. These documents are not released to the applicant until the period for the third party to appeal the decision has passed.

Courtesy consultation

However, you can undertake a courtesy consultation with another party where:

- the information is about a third party but would not likely cause damage to them if released; or
- you would like to get the views of a Commonwealth agency.

Courtesy consultation is not required under the FOI Act and it does not extend the statutory timeframe to respond to the FOI request.

FURTHER GUIDANCE

Please refer to the GCB FOI [intranet page](#) for guidance on exemptions and other related FOI guidance.

Key contacts:

s22 [REDACTED], FOI Contact Officer

6274 2098

FOI@environment.gov.au

Please note that the information contained in this FOI Guidance is provided to Departmental staff for general information only. It is not legal advice and should not be relied upon as if it was legal advice. If you require specific legal advice about an issue, please contact the General Counsel Branch.

Last updated on 15 July 2019.



[TEMPLATE – PRACTICAL REFUSAL NOTIFICATION]

[APPLICANT NAME]

[APPLICANT ADDRESS]

Email: **[APPLICANT EMAIL]**

Dear **[APPLICANT NAME]**

Freedom of Information Request No. [FOI NUMBER]

Notification of practical refusal reason

I refer to your request of **[DATE]** to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request seeks access to:

[SCOPE]

Practical refusal reason

I am writing to inform you of my intention to refuse the above request, as it attracts a practical refusal reason.

Read overall, **[the request / Item Number]** seeks **[summarise request / item]**. Prior to the removal of duplicates, **[NUMBER OF DOCUMENTS]** documents have been identified that fall within the scope of **[the request / Item Number]**, capturing over **[NUMBER]** pages. Each document would need to be reviewed to determine potential sensitivities.

[Include any additional reasons.]

We would also likely need to conduct consultation with multiple third parties in respect of the request.

I consider that due to the excessive page count and the extent of third party consultation required, the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations. Pursuant to section 24 of the FOI Act, I am therefore satisfied that a 'practical refusal reason' exists and intend to refuse your request for this reason. Prior to making a decision to this effect, the Department is required to undertake a 'request consultation process' with you (pursuant to section 24AB of the FOI Act).

Request consultation process

The purpose of the process is to assist you in refining the scope of your request so that the 'practical refusal reason' no longer exists.

The request consultation process will run for 14 days after the day you receive this notice. This period may be extended with the agreement of both parties. The processing period for your FOI request is suspended during the request consultation period.

Before the end of the consultation period, you **must** take one of the following actions by written notice to the Department via its FOI Contact Officer (details below):

- a) withdraw your request;
- b) make a revised request; or
- c) indicate that you do not wish to revise the request.

If you do not take one of the above steps within 14 days after the day that you receive this notice, your request will be taken to have been withdrawn.

For clarity, the Department considers a “revised request” to be request that captures a certain amount of documents subject to your original scope, however does not attract a practical refusal reason.

Suggestions for making a revised request

[NOTE: Work with the line area to identify a way that the scope may be revised so that a practical refusal reason no longer exists. When identified, propose the revised request below.]

The simplest way to make a revised request is to amend the scope of your existing request, either through removing certain Items or adding qualifiers to the scope. Taking these steps usually results in less documents being captured by the scope of the request, and removing the practical refusal reason.

I recommend that if you amended the scope above in the following way, it is likely that the practical refusal reason will no longer apply:

[INSERT PROPOSED AMENDED SCOPE]

Further assistance

You may contact the FOI Contact Officer at the following addresses:

By post: FOI Contact Officer
General Counsel Branch
Department of the Environment
GPO Box 787
Canberra ACT 2601

By email: foi@environment.gov.au

By phone: (02) 6274 2098

Yours sincerely

[NAME]
[TITLE]
[BRANCH]

[DATE]



[TEMPLATE - CONSULTATION RE PERSONAL INFORMATION]

[NOTE: If the documents contain contentious information about the third party, or their contents are otherwise likely to cause the third party distress or concern, call the third party on the phone prior to sending this letter to them. Let them know who you are, and the purpose of the letter. If you are unsure whether this step is required, consult with an FOI Specialist or a PLO.]

[NAME OF THIRD PARTY]

[ADDRESS]

By email: **XXXX**

Dear **[INSERT NAME OF THIRD PARTY]**

**Freedom of Information Request No. [INSERT NUMBER]
Third party consultation – personal information**

I am writing to seek your views on the potential disclosure of **[a document][documents]** that **[contains] [contain]** your personal information under the *Freedom of Information Act 1982* (the **FOI Act**). We require your response by **[DATE]**.

Details of request

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request under the FOI Act seeking:

[SCOPE]

The scope of this request has captured **[a document][documents]** that **[contains] [contain]** your personal information. **[This document is][These documents are]** described below, and form **ATTACHMENT B** of this letter.

No.	Description

Third party consultation

The Department seeks your views as to whether your personal information within **[this document][these documents]** would be exempt from release because its disclosure:

- would unreasonably disclose your personal information; **and**
- would be contrary to the public interest.

If the Department is satisfied that your personal information meets the above criteria, it will attract an exemption from disclosure pursuant to section 47F of the FOI Act, and not be released to the applicant. Alternatively, if the Department is not satisfied that your personal

information meets the above criteria, it may be released to the applicant in the form at **ATTACHMENT B**.

As iterated above, the Department requires your response by **[INSERT DATE]**.

If no response is received by this date, the Department will continue the processing of this request without the benefit of your views.

How to make a response

No objection to the disclosure of your personal information

If you do not object to the disclosure of the personal information within the **[document][documents]**, please write to us, informing us of your position.

Objecting to the disclosure of your personal information

If you wish to submit that the personal information within the **[document][documents]** described above should be exempt from disclosure because it meets the criteria described above, you will need to make a written submission to the Department. This submission should set out your position and reasons, explaining *how* your personal information meets the criteria.

It is unlikely that a mere assertion that your personal information should not be disclosed will satisfy the Department that it is exempt from release. A strong submission will make reference to material findings of fact, and include evidence to support them.

[IF RELEVANT] Further, if you make such a submission, the Department would greatly benefit from their views on the following:

- **[QUESTION 1]**
- **[QUESTION 2]**
- **[QUESTION 3]**

[Note: The above questions will usually only be required where the circumstances in which the Department received the personal information is unclear, or where an adverse effect through disclosure may be dependent on events that occurred before or after the receipt of the document. Eg. Did you intend for this information to be kept in confidence? Are you still working within X workplace?]

Please note that a submission that that the information is exempt will also require argument as to why disclosure of your personal information is contrary to the “public interest”.

Further information on making a submission, including guidance on what is considered to be in the “public interest” is at **ATTACHMENT A**.

You may provide your submission to the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

What happens after you make a submission?

The Department will give regard to the submission, but is not bound by any viewpoint expressed within it.

If the Department disagrees with the submission in respect of a certain document, and then decides to disclose that document pursuant to the request, you will be provided with the opportunity to seek review of this decision prior to the disclosure of the document.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[NAME]

[TITLE]

[BRANCH]

[DATE]

ATTACHMENTS:

- A. Personal information factsheet for third parties
- B. [Document][Documents] for third party consultation



PERSONAL INFORMATION FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether disclosure of your personal information will be unreasonable?

The Department will consider a range of factors including:

- any adverse consequences that you would likely suffer if the personal information were to be disclosed;
- whether the information is sensitive or private;
- the circumstances in which the Department obtained your personal information;
- the current relevance of the information (eg. if the information is dated its sensitivity may have lessened);
- the extent to which the information is already publicly known;
- whether the substance of the information could be inferred through publicly available sources.

You may wish to address the above in your submission.

What is the “public interest”?

The term “public interest” is not defined for the purpose of the FOI Act. However, when considering whether disclosure is in the public interest, the Department considers whether access would do any of the following (section 11A(3)):

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Paragraph 6.29 of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* also provides a non-exhaustive list of factors against disclosure. The most relevant factors with respect to personal information are where disclosure:

- (a) could reasonably be expected to prejudice the protection of an individual’s right to privacy, including where:
 - i. the personal information is that of a child, where the applicant is the child’s parent, and disclosure of the information is reasonably considered not to be in the child’s best interests
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person’s household) and the disclosure of the information could reasonably be expected to affect the deceased person’s privacy if that person were alive.
- (b) could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;

- (h) could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- (i) could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; or
- (m) could reasonably be expected to prejudice the management function of an agency.

The Department must not consider the following when considering whether disclosure is contrary to the public interest (section 11A(4)):

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of 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 document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

I thought that this communication would be kept private – how can someone access it under the FOI Act?

Under the FOI Act members of the public may request access to any document that is in the possession of the Australian government. The Department is required to disclose the documents to the applicant unless an exemption under the FOI Act applies.

If you feel that disclosure of the information would amount to a breach of your privacy, please make a submission to the Department, explaining why the personal information should be exempt from release.

The documents contain the personal information of someone else. Can I submit that this information is exempt?

If the document contains the personal information of a third party, it is likely that the Department is also consulting with them. You may otherwise submit that their personal information should be exempt, however you will not be granted an opportunity to seek review of the decision unless you submit that your own personal information is also exempt.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how my personal information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on the personal information exemption?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



[TEMPLATE - CONSULTATION RE BUSINESS INFORMATION]

[NAME]

[NAME OF COMPANY]

[ADDRESS]

By email: **[XXXXX]**

Dear **[INSERT NAME OF THIRD PARTY]**

Freedom of Information Request No. [INSERT NUMBER]

Third party consultation – business information

I am writing to seek your views on the potential disclosure of **[a document][documents]** under the *Freedom of Information Act 1982* (the **FOI Act**). We require your response by **[DATE]**.

Details of request

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request under the FOI Act seeking:

[SCOPE]

The scope of this request has captured **[a document][documents]** that **[contains][contain]** the business information of **[NAME OF COMPANY]**. **[This document is][These documents are]** described below, and form **ATTACHMENT B** to this letter.

No.	Description

Third party consultation

The Department seeks **[COMPANY NAME]**'s views as to whether the business information in **[this document][these documents]** falls into one or more of the following categories, attracting an exemption from disclosure under the FOI Act:

- trade secrets (section 47(1)(a));
- information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed (section 47(1)(b));
- information that would, or could reasonably be expected to, unreasonably affect **[COMPANY NAME]** adversely in respect their lawful business affairs **and** is contrary to the public interest to release (section 47G(1)(a)); and
- information that could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law **and** is contrary to the public interest to release (section 47G(1)(b)).

If the Department is satisfied that the business information falls within one of these categories, it will attract an exemption from disclosure under the FOI Act, and not be released to the

applicant. Alternatively, if the Department is not satisfied that the business information falls within one or more of the above categories, it may be released to the applicant in the form at **ATTACHMENT B**.

As iterated above, the Department requires [COMPANY NAME]'s response by [INSERT DATE].

If no response is received by this date, the Department will continue the processing of this request without the benefit of [COMPANY NAME]'s views.

How to make a response

No objection to the disclosure of the business information

If [COMPANY NAME] does not object to the disclosure of the business information held within the [document][documents] described above, please write to us, informing us of their position.

Objecting to the disclosure of the business information

If [COMPANY NAME] wishes to submit that the business information within the [document][documents] described above should be exempt from disclosure for falling into one of the above categories, they will need to make a written submission to the Department. This submission should set out their position explaining *how* the business information falls within one of the above categories.

It is unlikely that a mere assertion that the business information should not be disclosed will satisfy the Department that an exemption applies. A strong submission will make reference to material findings of fact, and include evidence to support them.

Further, if [COMPANY NAME] makes such a submission, the Department would greatly benefit from their views on the following:

- [QUESTION 1]
- [QUESTION 2]
- [QUESTION 3]

[Note: The above questions are specific to the documents at hand. For example “Could you explain in real, practical terms how the release of offset material as contained in Document 1 would cause damage to the business affairs of X Company?”]

Please note that a submission that that the information attracts an exemption pursuant to sections 47G(1)(a) or 47G(1)(b) will also require argument as to why disclosure of the business information is contrary to the “public interest”.

Further information on making a submission, including guidance on what is considered to be in the “public interest” is at **ATTACHMENT A**.

You may provide your submission to the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

What happens after you make a submission?

The Department will give regard to the submission, but is not bound by any viewpoint expressed within it.

If the Department disagrees with the submission in respect of a certain document, and then decides to disclose that document pursuant to the request, you will be provided with the opportunity to seek review of this decision prior to the disclosure of the document.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[NAME]

[TITLE]

[BRANCH]

[DATE]

ATTACHMENTS:

- A. Business information factsheet for third parties
- B. [Document][Documents] for third party consultation



BUSINESS INFORMATION FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether the business information attracts the exemptions under sections 47(1)(a) or 47(1)(b) of the FOI Act?

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* provide guidance on what the Department may consider in making a decision as to whether sections 47(1)(a) or 47(1)(b) apply. These are extracted in part below.

Trade secrets (section 47(1)(a))

5.185 *The Federal Court referred to the following test in considering whether information amounts to a trade secret:*

- *the information is used in a trade or business*
- *the owner must limit the dissemination of it or at least not encourage or permit widespread publication*
- *if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.*

5.186 *Factors that a decision maker might regard as useful guidance but not an exhaustive list of matters to be considered include:*

- *the extent to which the information is known outside the business of the owner of that information*
- *the extent to which the information is known by persons engaged in the owner's business*
- *measures taken by the owner to guard the secrecy of the information*
- *the value of the information to the owner and to his or her competitors*
- *the effort and money spent by the owner in developing the information*
- *the ease or difficulty with which others might acquire or duplicate the secret.*

Information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed (section 47(1)(b))

5.188 *To be exempt under s 47(1)(b) a document must satisfy two criteria:*

- *the document must contain information that has a commercial value either to an agency or to another person or body, and*
- *the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.*

5.189 *It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have*

‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- *whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value*
- *whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors*
- *whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information*
- *whether the information is still current or out of date (out of date information may no longer have any value)*
- *whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.*

What will the Department consider when deciding whether the business information attracts the exemptions under sections 47G(1)(a) or 47G(1)(b) of the FOI Act?

Information that would, or could reasonably be expected to, unreasonably affect a business adversely in respect their lawful business affairs **and** is contrary to the public interest to release (section 47G(1)(a))

To be satisfied that information attracts an exemption under section 47G(1)(a), the Department will consider several factors including:

- the actual damage that could occur to a business if the information were to be released;
- the availability of that information in the public realm;
- whether the substance of that information could be inferred from publicly available sources;
- whether it is reasonable to expect that such damage will flow from the disclosure of that information.

A mere assertion that disclosure of certain business information will cause damage will generally not satisfy the Department that an exemption applies. To this end, a submission must clearly set out the value in the information, and explain exactly *how* disclosure of that information could cause damage to a business.

Information that could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law **and** is contrary to the public interest to release (section 47G(1)(b))

The FOI Guidelines provide:

6.174 This limb of the conditional exemption comprises two parts:

- *a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government*
- *the reduction will prejudice the operations of the agency.*

6.175 There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be sufficient to prejudice the future supply of information. Disclosure of the person’s identity may also be conditionally exempt under s 47F (personal privacy). In these cases,

consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.

6.176 Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

If the business information in the documents was provided in pursuit of satisfying the conditions of an approval, the Department considers that no claim of prejudice can be made, consistent with the reasoning in paragraph 6.176.

What is the “public interest”?

To attract an exemption under sections 47G(1)(a) or 47G(1)(b), disclosure of the business information must also be contrary to the public interest.

The term “public interest” is not defined for the purpose of the FOI Act. However, when considering whether disclosure is in the public interest, the Department considers whether access would do any of the following (section 11A(3)):

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

The Department must not consider the following when considering whether disclosure is contrary to the public interest (section 11A(4)):

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of 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 document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies. This is because the applicant’s identity is not relevant to ascertaining the commercial value of any business information within the documents, or whether disclosure of that information could adversely affect the lawful businesses affairs of a business.

Can the company submit that the business information attracts exemptions under the FOI Act that are not listed within the consultation letter?

Yes, however the company will not have the opportunity to seek review of any decision unless they also submit that the business information is exempt for attracting one of the exemptions within the consultation letter.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how the business information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on the business exemptions?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



[TEMPLATE - CONSULTATION RE COMMONWEALTH STATE RELATIONS]

[NAME]

[STATE ENTITY]

[ADDRESS]

Dear **[INSERT NAME OF THIRD PARTY]**

Freedom of Information Request No. [INSERT NUMBER]
Third party consultation – Commonwealth-State relations

I am writing to seek the views of the **[STATE ENTITY]** on the potential disclosure of **[a document][documents]** under the *Freedom of Information Act 1982* (the **FOI Act**). We require their response by **[DATE]**.

Details of request

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request under the FOI Act seeking:

[SCOPE]

The scope of this request has captured **[a document][documents]** that **[contains][contain]** information that originated with or was received from the **[STATE ENTITY]** (**State-originated information**). **[This document is][These documents are]** described below, and form **ATTACHMENT B** of this letter.

No.	Description

Third party consultation

The Department seeks the views of the **[STATE ENTITY]** as to whether the State-originated information within **[this document][these documents]** would be exempt from release because its disclosure:

- would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State **and** would be contrary to the public interest; or
- would divulge information or matter communicated in confidence by the State to the Commonwealth **and** would be contrary to the public interest.

If the Department is satisfied that the State-originated information meets one or more of these criteria, it will attract an exemption from disclosure pursuant to section 47B of the FOI Act, and not be released to the applicant. Alternatively, if the Department is not satisfied that the State-originated information meets the above criteria, it may be released to the applicant in the form at **ATTACHMENT B**.

As iterated above, the Department requires the [STATE ENTITY]'s response by [INSERT DATE].

If no response is received by this date, the Department will continue the processing of this request without the benefit of the [STATE ENTITY]'s views.

How to make a response

No objection to the disclosure of the State-originated information

If the [STATE ENTITY] does not object to the disclosure of the State-originated information within the [document][documents], please write to us, informing us of their position.

Objecting to the disclosure of your State-originated information

If the [STATE ENTITY] wishes to submit that the State-originated information within the [document][documents] described above should be exempt from disclosure because it attracts an exemption under section 47B of the FOI Act, they will need to make a written submission to the Department. This submission should set out their position and reasons, explaining *how* the State-originated information meets the above criteria.

It is unlikely that a mere assertion that the State-originated information should not be disclosed will satisfy the Department that it is exempt from release. A strong submission will make reference to material findings of fact, and include evidence to support them.

[IF RELEVANT] Further, if you make such a submission, the Department would greatly benefit from their views on the following:

- [QUESTION 1]
- [QUESTION 2]
- [QUESTION 3]

[Note: The above questions will usually only be required where the circumstances in which the Department received the State-originated information is unclear, or if it unclear whether the disclosure of certain information is sensitive to the State entity]

Please note that a submission that that the information is exempt will also require argument as to why disclosure of the State-originated information is contrary to the “public interest”.

Further information on making a submission, including guidance on what is considered to be in the “public interest” is at **ATTACHMENT A**.

You may provide your submission to the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

What happens after you make a submission?

The Department will give regard to the submission, but is not bound by any viewpoint expressed within it.

If the Department disagrees with the submission in respect of a certain document, and then decides to disclose that document pursuant to the request, you will be provided with the opportunity to seek review of this decision prior to the disclosure of the document.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[NAME]

[TITLE]

[BRANCH]

[DATE]

ATTACHMENTS:

- A. State-originated information factsheet for third parties
- B. **[Document][Documents]** for third party consultation



STATE-ORIGINATED INFORMATION FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether disclosure of the State-originated information may cause damage to Commonwealth-state relations?

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* provide guidance on what the Department should consider. It provides, in part:

Cause damage to Commonwealth-State relations

6.38 A decision maker may consider that disclosure would, or could reasonably be expected to damage the working relations of the Commonwealth and one or more States (s 47B(a)). 'Working relations' encompass all interactions of the Commonwealth and the States, from formal Commonwealth-State consultation processes such as the Council of Australian Governments through to any working arrangements between agencies undertaken as part of their day to day functions.

6.39 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships
- impairing or prejudicing the flow of information to and from the Commonwealth.

6.40 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects.

6.41 The potential damage need not be quantified, but the effect on relations arising from the disclosure must be adverse. A potentially positive effect on Commonwealth-State relations would not fall within the conditional exemption.

Damage to be reasonably expected

6.42 The term 'could be reasonably expected' is explained in greater detail in Part 5 of these Guidelines. There must be real and substantial grounds for expecting the damage to occur which can be supported by evidence or reasoning. There cannot be merely an assumption or allegation that damage may occur if the document were released. For example, when consulting a State agency or authority as required under s 26A, the agency should ask the agency or authority for its reasons for expecting damage, as an unsubstantiated concern would not satisfy the s 47B(a) threshold.

What will the Department consider when deciding whether the State-originated information was communicated in confidence?

The FOI Guidelines provide:

6.43 Section 47B(b) conditionally exempts 'information communicated in confidence' to the Commonwealth Government or an agency by a State or an authority of a State. It is not necessary for the decision maker to find that disclosure may found an action for breach of confidence for this element to apply.

6.44 When assessing whether the information was communicated in confidence, the test is whether the communication was considered to be confidential at the time of the communication. The circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine or required
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information²⁰
- how the information was subsequently handled, disclosed or otherwise published.

...

6.46 This exemption should not be claimed where the documents relate to routine or administrative matters or documents that are already in the public domain.

I thought that this communication would be kept private – how can someone access it under the FOI Act?

Under the FOI Act members of the public may request access to any document that is in the possession of the Australian government. The Department is required to disclose the documents to the applicant unless an exemption under the FOI Act applies.

If you feel that disclosure of the information would amount to a breach of confidence, please make a submission to the Department, explaining why the State-originated information should be exempt from release.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies. This is because the applicant's identity is not relevant to ascertaining whether disclosure of the information would damage Commonwealth-State relations, or whether it was communicated in confidence.

Can I submit that the State-originated information attracts exemptions under the FOI Act that are not listed within the consultation letter?

Yes, however the company will not have the opportunity to seek review of any decision unless they also submit that the State-originated information is exempt for attracting one of the exemptions within the consultation letter.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how the State-originated information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on the Commonwealth-State relations exemption?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



Australian Government

Department of the Environment and Energy



[TEMPLATE - CONSULTATION RE FOREIGN ENTITIES]

[NAME]

[NAME OF FOREIGN ENTITY]

[ADDRESS]

By email: **XXXX**

Dear **[INSERT NAME OF THIRD PARTY]**

Freedom of Information Request No. [INSERT NUMBER]

Third party consultation – international relations

I am writing to seek your views on the potential disclosure of **[a document][documents]** that **[contains][contain]** information that originated from **[NAME OF FOREIGN ENTITY]** under the *Freedom of Information Act 1982* (the **FOI Act**). We require your response by **[DATE]**.

Details of request

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request under the FOI Act seeking:

[SCOPE]

The scope of this request has captured **[a document][documents]** that **[contains][contain]** information that originated from **[NAME OF FOREIGN ENTITY]**. **[This document is][These documents are]** described below, and form **ATTACHMENT B** of this letter.

No.	Description

Third party consultation

The Department seeks **[NAME OF FOREIGN ENTITY]**'s views as to whether the information in **[this document][these documents]** falls into one or more of the following categories, attracting an exemption from disclosure under the FOI Act:

- Disclosure of the information would, or could reasonably be expected to, cause damage to: (iii) the international relations of the Commonwealth (section 33(a)(iii)); or
- Disclosure of the information would divulge any information or matter communicated in confidence by or on behalf of **[NAME OF FOREIGN ENTITY]** to the Department (section 33(b)).

If the Department is satisfied that the information falls within one or more of these categories, it will attract an exemption from disclosure under the FOI Act, and not be released to the applicant. Alternatively, if the Department is not satisfied that the information falls within one or

more of the above categories, it may be released to the applicant in the form at **ATTACHMENT B**.

As iterated above, the Department requires **[NAME OF FOREIGN ENTITY]**'s response by **[INSERT DATE]**.

If no response is received by this date, the Department will continue the processing of this request without the benefit of **[NAME OF FOREIGN ENTITY]**'s views.

How to make a response

No objection to the disclosure of the information

If **[NAME OF FOREIGN ENTITY]** does not object to the disclosure of the information held within the **[document][documents]** described above, please write to us, informing us of their position.

Objecting to the disclosure of the information

If **[NAME OF FOREIGN ENTITY]** wishes to submit that the information within the **[document][documents]** described above should be exempt from disclosure for falling into one of the above categories, they will need to make a written submission to the Department. This submission should set out their position explaining *how* the information falls within one of the above categories.

It is unlikely that a mere assertion that the information should not be disclosed will satisfy the Department that an exemption applies. A strong submission will make reference to material findings of fact, and include evidence to support them.

Further, if **[NAME OF FOREIGN ENTITY]** makes such a submission, the Department would greatly benefit from their views on the following:

- **[QUESTION 1]**
- **[QUESTION 2]**
- **[QUESTION 3]**

[Note: The above questions are specific to the documents at hand. For example seeking information about the circumstances in which the information was provided to the Commonwealth, and any express understandings about any communication between the Commonwealth and the foreign entity]

Further information on making a submission is at **ATTACHMENT A**.

You may provide your submission to the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[NAME]

[TITLE]

[BRANCH]

[DATE]

ATTACHMENTS:

- A. International relations information factsheet for third parties
- B. [Document][Documents] for third party consultation



INTERNATIONAL RELATIONS FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether disclosure of the information will cause damage to the international relations of the Commonwealth?

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* provide guidance on what the Department should consider. It provides, in part:

International relations

- 5.30 The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between government agencies.
- 5.31 The mere fact that a government has expressed concern about a disclosure is not enough to satisfy the exemption, but the phrase does encompass intangible damage, such as loss of trust and confidence in the Australian Government or one of its agencies. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the conclusion that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.
- 5.32 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.

What will the Department consider when deciding whether the information was communicated in confidence by a foreign body to the Commonwealth?

The FOI Guidelines provide:

Information communicated in confidence

- 5.35 Section 33(b) exempts information communicated in confidence to the Australian Government or agency by another government or one of its authorities, or by an international organisation. One example is the confidential exchange of police information or information received from a foreign defence force agency.

- 5.36 The test is whether information is communicated in confidence between the communicator and the agency to which the communication is made — it is not a matter of determining whether the information is of itself confidential in nature. Information is communicated in confidence by or on behalf of another government or authority, if it was communicated and received under an express or implied understanding that the communication would be kept confidential. Whether the information is, in fact, confidential in character and whether it was communicated in circumstances importing an obligation of confidence are relevant considerations. They may assist the decision maker to determine whether, on the balance of probabilities, information was communicated in confidence.
- 5.37 The relevant time for the test of confidentiality is the time of communication of the information, not the time of the request for access. It is irrelevant for the purposes of the exemption that the foreign government or agency may have since reviewed the status of the document and it is no longer confidential. The document will still be exempt.
- 5.38 An agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communicated. To avoid doubt, s 4(10) confirms that the exemption applies to any documents communicated pursuant to any treaty or formal instrument on the reciprocal protection of classified information between the Australian Government and a foreign government (and their respective agencies) or an international organisation.
- 5.39 Classification markings on a document (such as secret or confidential) are not in themselves conclusive of confidential communication. An agency still needs to produce evidence supporting the claim that information was communicated in confidence by a foreign entity. The decision maker must make an independent assessment of that claim in light of the available evidence. Similarly, even where a foreign government or agency has identified a document as secret or confidential, the decision maker is still required to make an independent assessment that the information was communicated in confidence.

I thought that this communication would be kept private – how can someone access it under the FOI Act?

Under the FOI Act members of the public may request access to any document that is in the possession of the Australian government. The Department is required to disclose the documents to the applicant unless an exemption under the FOI Act applies.

If you feel that disclosure of the information would amount to a breach of confidence, please make a submission to the Department, explaining why it should be exempt from release.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies. This is because the applicant's identity is not relevant to ascertaining whether disclosure of the information will affect the working relations between the Commonwealth and the foreign entity, or whether that information was communicated in confidence.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how the information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on exemptions under the FOI Act?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



[TEMPLATE - CONSULTATION RE PERSONAL AND BUSINESS DOCUMENTS]

[INSERT NAME OF THIRD PARTY]

[INSERT ADDRESS]

By email: XXXX

Dear **[INSERT NAME OF THIRD PARTY]**

Consultation for Freedom of Information Request No. [INSERT NUMBER]

I am writing to seek your views on the potential disclosure of **[a document][documents]** under the *Freedom of Information Act 1982* (the **FOI Act**). We require your response by **[DATE]**.

Details of request

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request under the FOI Act seeking:

[SCOPE]

The scope of this request has captured **[a document][documents]** that **[contains][contain]** information about you or your business information of **[NAME OF COMPANY]**. **[This document is][These documents are]** described below, and form **ATTACHMENT C** to this letter.

No.	Description

Third party consultation

Personal

The Department seeks your views as to whether your personal information within **[this document][these documents]** would be exempt from release because its disclosure:

- would unreasonably disclose your personal information; **and**
- would be contrary to the public interest.

Business

The Department also seeks **[COMPANY NAME]**'s views as to whether the business information in **[this document][these documents]** falls into one or more of the following categories, attracting an exemption from disclosure under the FOI Act:

- trade secrets (section 47(1)(a));
- information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed (section 47(1)(b));

- information that would, or could reasonably be expected to, unreasonably affect **[COMPANY NAME]** adversely in respect their lawful business affairs **and** is contrary to the public interest to release (section 47G(1)(a)); and
- information that could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law **and** is contrary to the public interest to release (section 47G(1)(b)).
- If the Department is satisfied that your personal information meets the above criteria, it will attract an exemption from disclosure pursuant to section 47F of the FOI Act, and not be released to the applicant. Alternatively, if the Department is not satisfied that your personal information meets the above criteria, it may be released to the applicant in the form at **ATTACHMENT C**.

If the Department is satisfied that your personal information meets the criteria, it will attract an exemption from disclosure pursuant to section 47F of the FOI Act and not be released to the applicant. If the Department is satisfied that the business information falls within one of the categories, it will attract an exemption from disclosure under the FOI Act, and not be released to the applicant. Alternatively, if the Department is not satisfied that the personal or business information falls within one or more of the above categories, it may be released to the applicant in the form at **ATTACHMENT C**.

As iterated above, the Department requires your response by **[INSERT DATE]**.

If no response is received by this date, the Department will continue the processing of this request without the benefit of your views.

How to make a response

No objection to the disclosure of your personal information

If you do not object to the disclosure of the personal information within the **[document][documents]**, please write to us, informing us of your position.

Objecting to the disclosure of your personal information

If you wish to submit that the personal information within the **[document][documents]** described above should be exempt from disclosure because it meets the criteria described above, you will need to make a written submission to the Department. This submission should set out your position and reasons, explaining *how* your personal information meets the criteria.

It is unlikely that a mere assertion that your personal information should not be disclosed will satisfy the Department that it is exempt from release. A strong submission will make reference to material findings of fact, and include evidence to support them.

No objection to the disclosure of the business information

If **[COMPANY NAME]** does not object to the disclosure of the business information held within the **[document][documents]** described above, please write to us, informing us of their position.

Objecting to the disclosure of the business information

If **[COMPANY NAME]** wishes to submit that the business information within the **[document][documents]** described above should be exempt from disclosure for falling into one of the above categories, they will need to make a written submission to the Department. This submission should set out their position explaining *how* the business information falls within one of the above categories.

It is unlikely that a mere assertion that the business information should not be disclosed will satisfy the Department that an exemption applies. A strong submission will make reference to material findings of fact, and include evidence to support them.

Further, if you make such a submission, the Department would greatly benefit from your views on the following:

- [QUESTION 1]
- [QUESTION 2]
- [QUESTION 3]

[Note: The above questions are specific to the documents at hand. For example “Could you explain in real, practical terms how the release of offset material as contained in Document 1 would cause damage to the business affairs of X Company?”]

Please note that a submission that the information attracts an exemption pursuant to sections 47F, 47G(1)(a) or 47G(1)(b) will also require argument as to why disclosure of the personal and/or business information is contrary to the “public interest”.

Further information on making a submission, including guidance on what is considered to be in the “public interest” is at **ATTACHMENTS A and B**.

You may provide your submission to the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

What happens after you make a submission?

The Department will give regard to the submission, but is not bound by any viewpoint expressed within it.

If the Department disagrees with the submission in respect of a certain document, and then decides to disclose that document pursuant to the request, you will be provided with the opportunity to seek review of this decision prior to the disclosure of the document.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[NAME]
[TITLE]
[BRANCH]

[DATE]

ATTACHMENTS:

- A. Personal information factsheet for third parties
- B. Business information factsheet for third parties
- C. **[Document][Documents]** for third party consultation



PERSONAL INFORMATION FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether disclosure of your personal information will be unreasonable?

The Department will consider a range of factors including:

- any adverse consequences that you would likely suffer if the personal information were to be disclosed;
- whether the information is sensitive or private;
- the circumstances in which the Department obtained your personal information;
- the current relevance of the information (eg. if the information is dated its sensitivity may have lessened);
- the extent to which the information is already publicly known;
- whether the substance of the information could be inferred through publicly available sources.

You may wish to address the above in your submission.

What is the “public interest”?

The term “public interest” is not defined for the purpose of the FOI Act. However, when considering whether disclosure is in the public interest, the Department considers whether access would do any of the following (section 11A(3)):

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

Paragraph 6.29 of the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* also provides a non-exhaustive list of factors against disclosure. The most relevant factors with respect to personal information are where disclosure:

- (a) could reasonably be expected to prejudice the protection of an individual’s right to privacy, including where:
 - i. the personal information is that of a child, where the applicant is the child’s parent, and disclosure of the information is reasonably considered not to be in the child’s best interests
 - ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person’s household) and the disclosure of the information could reasonably be expected to affect the deceased person’s privacy if that person were alive.
- (b) could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;

- (h) could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- (i) could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; or
- (m) could reasonably be expected to prejudice the management function of an agency.

The Department must not consider the following when considering whether disclosure is contrary to the public interest (section 11A(4)):

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of 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 document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

I thought that this communication would be kept private – how can someone access it under the FOI Act?

Under the FOI Act members of the public may request access to any document that is in the possession of the Australian government. The Department is required to disclose the documents to the applicant unless an exemption under the FOI Act applies.

If you feel that disclosure of the information would amount to a breach of your privacy, please make a submission to the Department, explaining why the personal information should be exempt from release.

The documents contain the personal information of someone else. Can I submit that this information is exempt?

If the document contains the personal information of a third party, it is likely that the Department is also consulting with them. You may otherwise submit that their personal information should be exempt, however you will not be granted an opportunity to seek review of the decision unless you submit that your own personal information is also exempt.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required

to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how my personal information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on the personal information exemption?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



BUSINESS INFORMATION FACTSHEET FOR THIRD PARTIES

What will the Department consider when deciding whether the business information attracts the exemptions under sections 47(1)(a) or 47(1)(b) of the FOI Act?

The *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (FOI Guidelines)* provide guidance on what the Department may consider in making a decision as to whether sections 47(1)(a) or 47(1)(b) apply. These are extracted in part below.

Trade secrets (section 47(1)(a))

5.185 *The Federal Court referred to the following test in considering whether information amounts to a trade secret:*

- *the information is used in a trade or business*
- *the owner must limit the dissemination of it or at least not encourage or permit widespread publication*
- *if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret.*

5.186 *Factors that a decision maker might regard as useful guidance but not an exhaustive list of matters to be considered include:*

- *the extent to which the information is known outside the business of the owner of that information*
- *the extent to which the information is known by persons engaged in the owner's business*
- *measures taken by the owner to guard the secrecy of the information*
- *the value of the information to the owner and to his or her competitors*
- *the effort and money spent by the owner in developing the information*
- *the ease or difficulty with which others might acquire or duplicate the secret.*

Information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed (section 47(1)(b))

5.188 *To be exempt under s 47(1)(b) a document must satisfy two criteria:*

- *the document must contain information that has a commercial value either to an agency or to another person or body, and*
- *the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.*

5.189 *It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property.*

The following factors may assist in deciding in a particular case whether information has commercial value:

- *whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value*
- *whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors*
- *whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information*
- *whether the information is still current or out of date (out of date information may no longer have any value)*
- *whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.*

What will the Department consider when deciding whether the business information attracts the exemptions under sections 47G(1)(a) or 47G(1)(b) of the FOI Act?

Information that would, or could reasonably be expected to, unreasonably affect a business adversely in respect their lawful business affairs **and** is contrary to the public interest to release (section 47G(1)(a))

To be satisfied that information attracts an exemption under section 47G(1)(a), the Department will consider several factors including:

- the actual damage that could occur to a business if the information were to be released;
- the availability of that information in the public realm;
- whether the substance of that information could be inferred from publicly available sources;
- whether it is reasonable to expect that such damage will flow from the disclosure of that information.

A mere assertion that disclosure of certain business information will cause damage will generally not satisfy the Department that an exemption applies. To this end, a submission must clearly set out the value in the information, and explain exactly *how* disclosure of that information could cause damage to a business.

Information that could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law **and** is contrary to the public interest to release (section 47G(1)(b))

The FOI Guidelines provide:

6.174 This limb of the conditional exemption comprises two parts:

- *a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government*
- *the reduction will prejudice the operations of the agency.*

6.175 There must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government. In some cases, disclosing the identity of the person providing the business information may be

sufficient to prejudice the future supply of information. Disclosure of the person's identity may also be conditionally exempt under s 47F (personal privacy). In these cases, consideration should be given to whether the information may be disclosed without also disclosing the identity of the person supplying the information.

6.176 Where the business information in question can be obtained compulsorily, or is required for some benefit or grant, no claim of prejudice can be made. No prejudice will occur if the information in issue is routine or administrative (that is, generated as a matter of practice).

If the business information in the documents was provided in pursuit of satisfying the conditions of an approval, the Department considers that no claim of prejudice can be made, consistent with the reasoning in paragraph 6.176.

What is the "public interest"?

To attract an exemption under sections 47G(1)(a) or 47G(1)(b), disclosure of the business information must also be contrary to the public interest.

The term "public interest" is not defined for the purpose of the FOI Act. However, when considering whether disclosure is in the public interest, the Department considers whether access would do any of the following (section 11A(3)):

- (e) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (f) inform debate on a matter of public importance;
- (g) promote effective oversight of public expenditure;
- (h) allow a person to access his or her own personal information.

The Department must not consider the following when considering whether disclosure is contrary to the public interest (section 11A(4)):

- (e) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (f) access to the document could result in any person misinterpreting or misunderstanding the document;
- (g) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (h) access to the document could result in confusion or unnecessary debate.

Can I ask whom the applicant is?

If not provided with the consultation letter, you may ask the Department for the identity of the applicant. The Department will then approach the applicant for their consent to disclose their identity to you to better inform your views.

Please note that the Department will generally not give regard to the identity of the applicant when determining whether an exemption applies. This is because the applicant's identity is not relevant to ascertaining the commercial value of any business information within the documents, or whether disclosure of that information could adversely affect the lawful businesses affairs of a business.

Can the company submit that the business information attracts exemptions under the FOI Act that are not listed within the consultation letter?

Yes, however the company will not have the opportunity to seek review of any decision unless they also submit that the business information is exempt for attracting one of the exemptions within the consultation letter.

Do I have to respond to the consultation letter?

There is no requirement to respond to the consultation letter. If no response is received, the Department will proceed to make a decision without the benefits of your views.

What if I need extra time to make submission?

If you require further time to respond to the consultation letter, please contact the Department's FOI team at foi@environment.gov.au or (02) 6274 2098 to discuss. The Department is required to make a decision on the request by a statutory deadline, so an extension may not be available in all circumstances.

Can I place limitations on how the business information may be used, if it were disclosed?

No. Caveats cannot be placed upon the use of information that has been disclosed under the FOI Act. However, the applicant may leave themselves open to civil or criminal penalties if they use the information in a certain way.

Where can I find further information on the business exemptions?

You can find more information about the exemptions or the FOI process in the FOI Guidelines, available at www.oaic.gov.au.



[APPLICANT NAME]

[APPLICANT ADDRESS]

Email: [APPLICANT EMAIL]

Dear [APPLICANT NAME]

**Freedom of Information Request No. [FOI NUMBER]
Notification of charges [and third party consultation]**

I refer to your request of [DATE] to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request seeks access to:

[SCOPE]

[IF DECISION TO CONSULT HAS BEEN MADE AT SAME TIME AS CHARGES NOTIFICATION]

Third party consultation [Amend as necessary]

I have identified [NUMBER OF THIRD PARTIES] third [party][parties] that might reasonably wish to make an exemption contention pursuant to section 26A of the FOI Act (documents affecting Commonwealth-State relations), [NUMBER OF THIRD PARTIES] third [party][parties] pursuant to section 27 of the FOI Act (business documents) and [NUMBER OF THIRD PARTIES] third [party][parties] to section 27A of the FOI Act (personal information). [FOR INTERNATIONAL] I have [also] identified [NUMBER OF THIRD PARTIES] third [party][parties] that can provide information as to whether whether [a document][certain documents] may attract an exemption pursuant to sections 33(a)(iii) (Interational relations) or 33(b) (Information communicated in confidence by a foreign entity) of the FOI Act.

Pursuant to [section 15(6)(b)] [FOR INTERNATIONAL section 15(8)] of the FOI Act, I have decided that the statutory timeframe for processing this request should be extended by 30 days to allow for consultation to occur with [the third party][these third parties].

[END IF DECISION TO CONSULT HAS ALSO BEEN MADE AT SAME TIME AS CHARGES NOTIFICATION]

Notice of charges

I have identified [NUMBER OF DOCUMENTS] [document][documents] that fall within the scope of your request. [IF RELEVANT] Further, [as set out above][as per our correspondence of [DATE]], I have decided to consult with [NUMBER OF THIRD PARTIES] third [party][parties] so that they may provide their views on a release of [that document][those documents].

Due to the resources required, I have decided that a charge is payable for the processing of this request (pursuant to Regulation 3(1) of the *Freedom of Information (Charges) Regulations 1982*). The details of this charge are set out below:

Cost type	Amount
Search and retrieval time: [INSERT # of hours] @ \$15ph	[\$[INSERT AMOUNT]]
Decision-making time: [INSERT # of hours] @ \$20ph	[\$[INSERT AMOUNT]]
Subtotal	[\$[INSERT SUM OF ABOVE AMOUNTS]]
Less 5 hours complementary decision-making time	\$-100.00
Total due to the Department	[\$[INSERT SUBTOTAL MINUS \$100]]

The total charge payable is \$[INSERT TOTAL]. [If the total charge exceeds \$100] I have determined that you may pay a deposit of \$[INSERT 25 % OF THE TOTAL AMOUNT] (25% of the total amount) to allow for the processing of your request to continue. [If the total charge is between \$25 and \$100] I have determined that you may pay a deposit of \$20 to allow for the processing of your request to continue.

The charge has been calculated on the assumption that you would prefer to receive electronic copies of the documents via email. Accordingly the charge does not include costs incurred for postage or photocopying. If you would prefer to receive hard copy documents, please let me know so that the charge may be amended to accommodate for these further costs.

Required actions

Within **30 days** of receipt of this notice you must either:

- pay the charge [or deposit];
- contend that the charge has been wrongly assessed, should be reduced or not imposed; or
- withdraw your FOI request.

If you fail to take one of these actions within **30 days** of receiving this notice, your FOI request will be taken to have been withdrawn.

Payment of charge or deposit

To pay the charge [or deposit], please follow the directions provided at **ATTACHMENT A**.

[IF A DEPOSIT IS PAYABLE] If you decide to pay a deposit, the documents subject to the request will not be disclosed until the remainder of the charge is paid. Once a deposit is paid, there is no statutory deadline for payment of the remainder of the charge.

Contention of charges

If you wish to contend that the charges have been wrongly assessed, should be reduced or not imposed, please provide your written contention to one of the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Email: foi@environment.gov.au

Your written contention must include the reasons as to why you consider the Department should amend, reduce or waive the charge. For guidance, when deciding to reduce or waive a charge I need to consider whether:

- payment of the charge, or part of it, would cause you financial hardship; or
- the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

You may wish to address the above in your contention.

Amendment of request

It is open to you to amend your request so that less documents are captured within the scope. This may reduce the time required to process your request, and in turn the charges issued for it.

If you wish to amend the scope of your request, please contact the Department's FOI team at foi@environment.gov.au.

Suspension of FOI clock

Pursuant to section 31 of the FOI Act, the statutory timeframe for processing your request is suspended from the day that you receive this notice until:

- the day the Department receives payment of the charge (in full or the required deposit); or
- the day the Department decides not to impose the charge.

Yours sincerely

[INSERT NAME OF DELEGATE]
[INSERT POSITION OF DELEGATE]
[INSERT BRANCH OF DELEGATE]

[INSERT DATE]

ATTACHMENTS:

A. Payment of Charge – Freedom of Information Request



PAYMENT OF CHARGE
Freedom of Information Request

REFERENCE NUMBER	FOI [FOI NUMBER]
AMOUNT	\$XX.XX (Payment in full) \$XX.XX (Deposit)

PAYMENT BY ELECTRONIC FUNDS

Payment by Electronic Funds Transfer (EFT) can be made using the following details:

BSB 092-009
Account No. 115859
Description FOI [FOI NUMBER]

PAYMENT BY CHEQUE OR MONEY ORDER

Please include this Payment of Charge sheet with your cheque or money order.

Please make the cheque or money order payable to **Department of the Environment and Energy**. You may post it to the below address:

FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA CITY ACT 2601

PLEASE NOTE: Failure to include the correct reference number with your payment may result in delays in processing your request. In a worst case scenario, your request may be treated as withdrawn. Please take care to include the correct reference number with your payment.

MINUTE

Consultation for Freedom of Information Request No. **[NUMBER]**

To: **[YOUR NAME]**
[YOUR TITLE]
General Counsel Branch

CC: Kate Lalor
Deputy General Counsel
General Counsel Branch

[TEMPLATE – DECISION TO CONSULT]

On **[DATE]** the Department of the Environment and Energy (the **Department**) received a request from **[APPLICANT NAME]** under the *Freedom of Information Act 1982* (the **FOI Act**). The request seeks access to:

[INSERT SCOPE]

Decision to consult

[BUSINESS INFORMATION CONSULT]

Business information

This request seeks access to **[a document containing][documents that contain]** the business information of the following third parties:

- (a) Business 1
- (b) Business 2
- (c) Business 3
- (d) etc

It appears to me that **[this third party][these third parties]** might reasonably wish to make a contention (an **exemption contention**) that the **[document is][documents are]** exempt under section 47 of the FOI Act, or conditionally exempt under section 47G and that access to **[the document][those documents]** would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

I am therefore required, pursuant to section 27(4) of the FOI Act, to give the above named third **[party][parties]** a reasonable opportunity to make submissions in respect of the exemption contention.

[END BUSINESS INFORMATION CONSULT]

[PERSONAL INFORMATION CONSULT]

Personal information

This request seeks access to **[a document containing][documents that contain]** the personal information of the following third parties:

- (a) Person 1
- (b) Person 2
- (c) Person 3
- (d) etc

It appears to me that [this individual][these individuals] might reasonably wish to make a contention (an **exemption contention**) that the [document is][documents are] conditionally exempt under section 47F of the FOI Act, and that access to [the document][those documents] would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

I am therefore required, pursuant to section 27A(3) of the FOI Act, to give the above named third [party][parties] a reasonable opportunity to make submissions in respect of the exemption contention prior to providing the applicant access to [that document][those documents].

[END PERSONAL INFORMATION DECISION]

[STATE-COMMONWEALTH INFORMATION CONSULT]

State Government [entity][entities]

This request seeks access to [a document containing][documents that contain] information that originated with, or was received from the following State Government [entity][entities]:

- (a) State Government Entity 1
- (b) State Government Entity 2
- (c) State Government Entity 3
- (d) etc

It appears to me that [this State Government entity][these State Government entities] might reasonably wish to make an exemption contention that the [document is][documents are] exempt under section 47B of the FOI Act (Commonwealth/State relations), and that access to [the document][those documents] would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

I am therefore required, pursuant to section 26A(2) of the FOI Act, to consult with the above named third [party][parties] prior to providing the applicant access to [that document][those documents].

[END STATE-COMMONWEALTH INFORMATION CONSULT]

[FOREIGN GOVERNMENT OR INTERNATIONAL ORGANISATION CONSULT]

[Foreign government/s][International organisation/s]

This request seeks access to [a document containing][documents that contain] information which originated from or relates to the following [foreign government/s][international organisation/s]:

- (a) Foreign Entity 1
- (b) Foreign Entity 2
- (c) Foreign Entity 3
- (d) etc

I have determined that it is necessary to consult with [this foreign government/international organisation][these foreign governments/international organisations] to assist me with deciding whether the [document][documents] attract an exemption pursuant to sections 33(a)(iii) (International relations of the Commonwealth) or section 33(b) (Information communicated in confidence).

[END FOREIGN GOVERNMENT OR INTERNATIONAL ORGANISATION CONSULT]

I have therefore decided that the Freedom of Information Team, General Counsel Branch, should consult with the above named third [party][parties] and inform me of their [response][responses].

The consultation packages to be provided to the third [party][parties] identified above are at **ATTACHMENT A**.

Extension of statutory period

Pursuant to [section 15(6)] **FOREIGN GOVERNMENT/ORANISATION ONLY** section 15(8) of the FOI Act, I have determined it appropriate to extend the processing time for this request by 30 days to allow for consultation to occur.

[INSERT NAME OF DECISION-MAKER]

[INSERT POSITION OF DECISION-MAKER]

[INSERT BRANCH OF DECISION-MAKER]

[INSERT DATE]

ATTACHMENTS:

A. Consultation [package][packages] for third parties

s22

Dear XXXX

The Department of the Environment and Energy are writing to seek your views on the release of the **attached** documents containing information originating from [**<insert Agency/authority/Office of the Hon... MP>**] subject to an FOI request (our ref **XXXXXX**).

We would be grateful for your response by **COB [**<insert date up to 2 weeks from now>**]**. If we do not hear from you by this date we will make a decision on release of the attached documents without the benefit of your views.

Please don't hesitate to contact the FOI team if you require an extension or wish to discuss.

Please note that the attached documents contain redactions made to:

- the personal information of non SES Government officers which we assume to be irrelevant to scope of the request pursuant to section 22 of the FOI Act, and
- the personal information of members of the [**<public/private industry staff>**] that would be unreasonable to disclose (for example if it is not well known in connection to the matter) pursuant to section 47F of the FOI Act.

The request is seeking:

<Insert scope of request>

Thank you for your assistance with this matter.

Kind regards



[TEMPLATE – NOTIFICATION OF DECISION – NO OBJECTIONS/RESPONSE – S26A]

[INSERT NAME OF APPLICANT]

[INSERT ADDRESS OF APPLICANT]

Dear **[INSERT NAME OF APPLICANT]**

Freedom of Information – Notification of Access Decision – Request No. [INSERT NUMBER]

On **[INSERT DATE]**, I wrote to you to seek your agency's views on the release of certain documents requested from the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**).

[If a submission was received] Thank you for your submission dated **[INSERT DATE]**.

Consultation process

As document number[s] **[insert document numbers, eg, 1, 4 and 5]** falling within the scope of the request contained information regarding your agency, you were consulted in accordance with s26A of the FOI Act (documents affecting Commonwealth-State relations).

You advised that your agency has no objections to the release of the documents.

Or

The Department did not receive a response to the consultation request.

Decision

Under s26A(3) of the FOI Act, I am required to provide you with written notice of my decision in relation to the document[s] that was/were the subject of consultation.

After considering the FOI request, I have decided to:

- **grant access** to document numbers **[insert document numbers, eg, 2, 3, 6 and 7]**;
- **grant access to parts** of document numbers **[insert document numbers, eg, 1, 4 and 5]**. Access to parts of these documents has been refused because those parts contain material that is exempt under s [insert] of the FOI Act and/or is irrelevant under s22 of the FOI Act. Those parts have been removed in accordance with s22 of the FOI Act;
- **refuse access in full** to document numbers **[insert document numbers, eg, 8]** as these documents are exempt under s **[insert applicable exemption]** of the FOI Act.

I enclose the relevant documents in the form that they are intended to be released to the FOI applicant for your consideration.

Review rights

Under s26A(4) of the FOI Act, I must not give the FOI applicant access to the documents until all the opportunities for your agency to seek review of the decision have run out.

Under the FOI Act you may seek a review of my decision through:

- an internal review that is conducted by the Department – see Part VI of the FOI Act; or
- a review by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at **Attachment A**.

Disclosure log

[IF PUBLISHING] Pursuant to section 11C of the FOI Act, the Department will publish on their website details of how the documents at **ATTACHMENT C** may be obtained within 10 days of providing you with this decision.

[IF NOT PUTTING ON DISCLOSURE LOG] As the documents at **ATTACHMENT C** consist in their entirety of sensitive [personal information][business information], the Department considers that it would be unreasonable to publish them upon their website.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au for any assistance.

Yours sincerely

[INSERT NAME OF DECISION-MAKER]

[INSERT POSITION OF DECISION-MAKER]

[INSERT BRANCH OF DECISION-MAKER]

[INSERT DATE]

YOUR REVIEW RIGHTS

Internal 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 of the decision made must be made in writing. No particular form is required but it is helpful if you set out in the application the grounds on which you consider that the decision should be reviewed. Your application for an internal review should be sent to one of the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Email: foi@environment.gov.au

Review by the Information Commissioner

You may request a review of this decision by the Information Commissioner.

If you request an internal review and are unhappy with the result you may also apply for an Information Commissioner review.

If you wish to request a review by the Information Commissioner you must apply to the Information Commissioner within 30 days after the day on which notice of this decision (or an internal review decision) was given to you.

Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Post: GPO Box 5218, Sydney NSW 2001

Fax: 02 9284 9666

Phone: 1300 363 992

Email: enquiries@oaic.gov.au



[TEMPLATE – FOI DECISION LETTER]

[APPLICANT NAME]

[APPLICANT ADDRESS]

Email: **[APPLICANT EMAIL]**

Dear **[APPLICANT NAME]**

**Freedom of Information Request No. [FOI NUMBER]
Decision on Access**

I refer to your request of **[DATE]** to the Department of the Environment and Energy (the **Department**) under the *Freedom of Information Act 1982* (the **FOI Act**). Your request seeks access to:

[SCOPE]

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

The Department has identified **[NUMBER]** **<document><documents>** relevant to the scope of your request.

I have decided to: **[AMEND AS NECESSARY]**

- **grant access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** in full;
- **grant access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** in part, as **<it contains><they contain>** material that I consider exempt pursuant to **<section><sections>** **[LIST SECTIONS OF FOI ACT]** of the FOI Act, or irrelevant to the request pursuant to section 22 of the FOI Act; and
- **refuse access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]**, as **<it><they>** **<consists><consist>** of material that I consider exempt pursuant to **<section><sections>** **[LIST SECTIONS OF FOI ACT]** of the FOI Act.

A schedule describing these documents and my decision in respect of each is at **ATTACHMENT A**. **ATTACHMENT B** contains information regarding your review rights, should you wish to seek review of my decision.

The documents are at **ATTACHMENT C**.

[IF APPLICABLE] *Third party review rights*

As part of the decision making process, I consulted with <a third party><several third parties>, seeking their <submission><submissions> as to whether documents subject to the request attracted an exemption under the FOI Act. My decision does not accept the <submission><submissions> of <that third party><those third parties> in full with respect to <Document><Documents> [LIST DOCUMENT NUMBERS]. I am required to withhold access to these documents so that <the third party><those third parties> has the opportunity to seek a review of my decision.

<The document> <These documents> will be provided to you either 30 days after the <third party><third parties> are notified of my decision, or otherwise when their review rights are exhausted.

Material considered in making my decision

I had regard to:

- the scope of the FOI request
- the content of the <document><documents> subject to your request
- the relevant provisions in the FOI Act
- advice from subject matter experts within the Department
- **[IF RELEVANT]** third party responses to third party consultation
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

Reasons for decision

Material deleted pursuant to Section 22

Deletion of irrelevant material

Section 22 of the FOI Act allows for information that is irrelevant to your request to be deleted. The documents captured by your request include the personal information of junior government officers and the personal contact information of senior government officers. As iterated in our correspondence of [DATE], the Department considers this material to be irrelevant to the scope of a request where no representation has been made that they be specifically included. The Department has not received a representation to this effect. Accordingly, I have decided that the personal information of junior government officers and the personal contact details of senior officers are irrelevant to the scope of your request and have deleted that information pursuant to section 22 of the FOI Act.

[IF RELEVANT] Further, <Document><Documents> [LIST DOCUMENT NUMBERS] contained material that did not relate to [DESCRIBE SCOPE IN GENERAL]. I have deleted this material pursuant to section 22 of the FOI Act, as it is irrelevant to the scope of the request.

Disclosure Log

[IF PUBLISHING] Pursuant to section 11C of the FOI Act, the Department will publish on their website details of how the documents at **ATTACHMENT C** may be obtained within 10 days of providing you with this decision.

[IF NOT PUTTING ON DISCLOSURE LOG] As the documents at **ATTACHMENT C** consist in their entirety of sensitive **[personal information][business information]**, the Department considers that it would be unreasonable to publish them upon their website.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[DELEGATE NAME]

[DELEGATE POSITION]

[DATE]

ATTACHMENTS:

- A. Schedule of documents
- B. Information sheet "Your Review Rights"
- C. Documents subject to your request



FOI [FOI NUMBER] Schedule of Documents

No	Description	Decision
1	EXAMPLE EMAIL DOCUMENT Email correspondence Subject: Offsets of X Corporation	<i>Release in part</i> Section 22 - personal information of government officers, material irrelevant to scope Section 47G - details of offset strategy of X Corporation
1a	EXAMPLE BRIEF / ATTACHMENT TO EMAIL Final decision brief Approval for EPBC 1234/2018	<i>Release in full</i>
2	EXAMPLE LETTER Letter to the Minister Re: Approval of EPBC 123/2018	<i>Release in part</i> Section 47F - personal information of private industry staff

No	Description	Decision



YOUR REVIEW RIGHTS

You may seek review of this primary decision either internally by the Department (internal review), or externally by the Information Commissioner (Information Commissioner review).

Internal review

An internal review is a review of the decision conducted by a senior officer within the Department. The reviewing officer will not be the same person whom made the primary decision.

If you wish to seek an internal review, you must submit a written application to the Department within 30 days after the day you are notified of this decision. Whilst there is no required form for the written internal Review application, it is recommended that you include your reasons as to why the primary decision should be reviewed.

The decision on the internal review will be provided to you within 30 days of the Department receiving your application.

You can submit your written internal review application to the below addresses:

Email: foi@environment.gov.au

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Post: GPO Box 5218, Sydney NSW 2001

Fax: 02 9284 9666

Phone: 1300 363 992

Email: enquiries@oaic.gov.au



TEMPLATE – FOI NOTIFICATION TO THIRD PARTY LETTER

[THIRD PARTY NAME]

[APPLICANT ADDRESS]

Email: **[THIRD PARTY EMAIL]**

Dear **[THIRD PARTY NAME]**

**Freedom of Information Request No. [FOI NUMBER]
Notification of Access Decision**

I write to you concerning your submission of **[DATE]** **[on behalf of [COMPANY NAME]]** to the Department of the Environment and Energy (the **Department**). Your submission concerned FOI **[FOI NUMBER]**, a request for access to documents under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**).

Consultation Process

On **[DATE]** the Department sought **[your][COMPANY/STATE ENTITY NAME's]** views on the disclosure of **[Document][Documents][DOCUMENT NUMBERS]** under the FOI Act, as **[it contains][they contain] [your personal information][their business information][information that originated from [STATE ENTITY NAME]]**.

On **[DATE]**, you submitted that the Department should consider **[all of the documents][Documents X, Y and Z]** exempt pursuant to **[section][sections] [IDENTIFY SECTIONS]** of the FOI Act.

Decision

The purpose of this letter is to inform **[you][COMPANY/STATE ENTITY NAME]** of the decision made in respect of those documents that were the subject of consultation.

On **[DATE]**, **[I][the decision maker for this request, [DELEGATE NAME], [DELEGATE TITLE]]** decided to:

- **grant access** to **<Document><Documents> [LIST DOCUMENT NUMBERS]** in full;
- **grant access** to **<Document><Documents> [LIST DOCUMENT NUMBERS]** in part, as **<it contains><they contain>** material that I consider exempt pursuant to **<section><sections> [LIST SECTIONS OF FOI ACT]** of the FOI Act, or irrelevant to the the request pursuant to section 22 of the FOI Act; and
- **refuse access** to **<Document><Documents> [LIST DOCUMENT NUMBERS]**, as **<it><they> <consists><consist>** of material that I consider exempt pursuant to **<section><sections> [LIST SECTIONS OF FOI ACT]** of the FOI Act.

This decision does not accept **[your][COMPANY/STATE ENTITY NAME's]** submission with respect to **[Document][Documents][DOCUMENT NUMBERS]** (the **documents in contention**) for the reasons provided below.

Reasons

[DESCRIBE REASONS]

If [you decide][COMPANY/STATE ENTITY NAME decides] *not* to seek review of this decision, the documents in contention will be released to the FOI Applicant in the form at **ATTACHMENT B**.

Review rights

Under the FOI Act [you][COMPANY/STATE ENTITY NAME] may seek review of the Department's decision through:

- an internal review that is conducted by the Department – see Part VI of the FOI Act; or
- a review by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at **ATTACHMENT A**. If [you wish][COMPANY/STATE ENTITY NAME wishes] to see review [you][they] must do so within 30 days after the day you received this notice.

Disclosure Log

[IF PUBLISHING] The Department will publish the documents at **ATTACHMENT B** on their website immediately upon the expiry of your review rights.

[IF NOT PUTTING ON DISCLOSURE LOG] As the documents at **ATTACHMENT B** consist in their entirety of sensitive [personal information][business information], the Department considers that it would be unreasonable to publish them upon their website.

Further assistance

The FOI Contact Officer in the Department can be contacted on telephone 02 6274 2098 or email foi@environment.gov.au for any assistance with your request.

Yours sincerely

[NAME] (Does not have to be delegate)

[TITLE]

[DATE]

ATTACHMENTS:

- A. Procedure for seeking review of decision
- B. Documents in contention (in form to be released to the applicant)



YOUR REVIEW RIGHTS

You may seek review of the primary decision either internally by the Department (Internal review), or externally by the Information Commissioner (Information Commissioner review).

Internal review

An Internal review is a review of the decision conducted by a senior officer within the Department. The reviewing officer will not be the same person whom made the primary decision.

If you wish to seek an internal review, you must submit a written application to the Department within 30 days after the day you are notified of this decision. Whilst there is no required form for the written Internal Review application, it is recommended that you include your reasons as to why the primary decision should be reviewed.

The decision on the Internal review will be provided to you within 30 days of the Department receiving your application.

You can submit your written Internal review application to the below addresses:

Email: foi@environment.gov.au

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment
GPO Box 787
Canberra ACT 2601

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the appellant, the applicant, and any other third parties consulted as part of the decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to them within 30 days after the day you receive notification of the decision. Further information, including instructions on how to apply for a review, is available through the following:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Post: GPO Box 5218, Sydney NSW 2001

Fax: 02 9284 9666

Phone: 1300 363 992

Email: enquiries@oaic.gov.au



[TEMPLATE - CONTENTION OF CHARGES LETTER]

[INSERT NAME OF APPLICANT]

[INSERT ADDRESS OF APPLICANT]

Dear **[INSERT NAME OF APPLICANT]**

Freedom of Information Request No. **[INSERT NUMBER]** – Charges Decision Letter

I refer to your request of **[INSERT DATE]** **[DRAFTING NOTE – Amend as appropriate: requesting a waiver of fees/contending that charges were *wrongly assessed / should not be imposed / should be reduced*]** in relation to your FOI request **[INSERT NO.]** for:

[INSERT SCOPE]

Authority

I am authorised by the Secretary of this Department in accordance with s23 of the FOI Act to make decisions in respect of FOI requests, including decisions relating to charges.

Background

In accordance with s29 of the FOI Act, I made a preliminary assessment of the charges and notified you on **[INSERT DATE]** that you were required to pay a charge of **[INSERT AMOUNT]** for the processing of your FOI request.

As noted above, you contended that the charges **[DRAFTING NOTE – Amend as appropriate – should be waived/were wrongly assessed / should not be imposed / should be reduced]****[DRAFTING NOTE – Amend as appropriate on public interest grounds / financial hardship / INSERT ANY OTHER GROUNDS THAT MAY BE CLAIMED AND OTHER RELEVANT BACKGROUND INFORMATION, IF ANY].**

Contention that charges have been wrongly assessed

[DRAFTING NOTE – where the applicant has contended that the charges have been wrongly assessed, the next paragraph in this letter should set out information regarding how the charges have been calculated. In doing so, the writer should ensure that:

- **the process that the Department went through to calculate the charges (ie the process of identifying the number of documents, considering the estimated time it will take to make a decision, making copies of the documents with redactions (if relevant)) is clearly set out; and**
- **it is clear that the Department has understood and correctly applied the relevant provisions of the FOI Act, and more importantly, the Charges Regulations in calculating the charges]**

A sample response is as follows – the level of detail you include will depend on the contentions made:

In accordance with Items 2 and 5 of the Schedule to the Freedom of Information (Charges) Regulations 1982, the FOI charges notified to you were based upon:

- search and retrieval time, and
- decision making time.

The Department calculates charges based on a standard formula which is consistent across all requests.

The search and retrieval time is based upon the number of documents identified as falling within the scope of your request (60 documents). The Department conservatively estimates 1 minute of search time for finding each document (in this instance 1 hour in total) and 30 minutes for every 10 documents for collating them, entering them into the Department's file management system and preparing schedules of the documents (3 hours). At \$15 per hour for the four hours, this equated to a search and retrieval cost of \$60.

The decision making time is based upon the number of pages in the documents, the number of pages where it is anticipated that more detailed consideration is required, and the number of third parties we are required to consult. Decision making time is charged at \$20 per hour.

In this instance, there are 3 required third party consultations (we allocate 2 hours per third party to prepare consultation letters, collate acceptable versions of the documents for the third party's review and considering the submissions made by the third party). The Department allocates 3 minutes for reviewing and making a decision on each page, and an extra 5 minutes for pages where more detailed consideration of the content is required. In this instance, the Department identified 497 pages as potentially being within the scope of your FOI request. However, the charges are only based on a figure of 244 pages after identifying some documents as being publicly available and identifying some pages of documents as being irrelevant to your request – the delegate made a decision not to charge you for these pages. The Department estimated that the majority of the chargeable pages may require redactions and more detailed consideration. In total, 37.12 hours of decision making time was calculated. As Departments are required to provide the first five hours of decision making for free, the total decision making time was calculated as 32.12 hours for a total cost of \$642.33.

[DRAFTING NOTE –where the applicant has contended that the charges should not be imposed or should be reduced insert the remaining paragraphs:

Decision

Under subsection 29(5) of the FOI Act, I am required to take into account whether the payment of the charge would cause financial hardship to you, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

I have decided that the payment of the charge would not cause financial hardship to you.

I have also decided that giving access to the documents is not in the public interest.

As a result, I have decided not to waive or reduce the charge for the FOI request.

Material considered in making my decision

In making my decision, I have considered:

- The FOI Act;

- The FOI Guidelines;
- The reasoning you have provided; and
- The documents.

Reasons for decision

Financial hardship

In considering whether paying the charge would cause financial hardship to you, I have considered the FOI Guidelines, which at 4.52 sets out that financial hardship will generally exist where “payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible”.

The Guidelines also set out that an applicant would ordinarily be expected to provide some evidence of financial hardship, for example, evidence of receipt of a pension or income support payment.

[DRAFTING NOTE – Insert your conclusion here, by way of example: Although you have contended that the charges amount to a substantial portion of your average monthly income, you have not given further details about how this will lead to financial hardship to you.]

I note that in the case of *‘BU’ and Department of Immigration and Border Protection [2014] AICmr 42*, the Information Commissioner did not accept the applicant’s contention of financial hardship given that no evidence was supplied in support of this. Similarly, I do not have any evidence before me to establish that payment of the charge would cause financial hardship to you. Therefore, I have made a decision that payment of the charges would not cause financial hardship to you.

Public interest

In accordance with s29(5) of the Act, I am required to consider whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

You have stated in your letter that access to the information is in the public interest as **[INSERT REASONS]**.

[DRAFTING NOTE – Insert full reasoning and conclusion here]

[DRAFTING NOTE: INSERT ANY OTHER REASONS THAT MAY ALSO BE RELEVANT – for example only] I also note that a significant amount of work will be required to process the request given the number of documents, the complexity of issues and the sensitivities involved. The existing charges are based on this workload. Under the FOI Act, it is open to agencies to impose a charge to applicants to account for the work involved in processing a request.

Next steps

As I have decided **[insert reasons]**, the total amount of charges you are required to pay is \$**[INSERT]**. Your request will continue to be suspended until this payment is received.

[DRAFTING NOTE – If the decision is to uphold the charges or reduce the charges, insert the following paragraph. If decision is to waive charges in full remove the below paragraph and payment slip from letter.]

Please follow the directions in the attached payment slip (**Attachment A**) when making payment. Identifying your payment in the manner outlined in the payment slip is critical to ensure your request is not taken to be withdrawn in accordance with s29(2) of the FOI Act. Please be aware that the Department will not release any documents to you until it has received payment of the charges in full.

Review rights

Under the FOI Act you may seek a review of my decision through:

- an internal review that is conducted by the Department – see Part VI of the FOI Act; or
- a review by the Information Commissioner – see Part VII of the FOI Act.

Further information regarding your review rights is available at **Attachment [INSERT 'A' 'if payment slip is not required, will otherwise be 'B']**.

Further assistance

The FOI Contact Officer in the Department can be contacted on telephone on 02 6274 2098 or by email at foi@environment.gov.au for any assistance with your request.

Yours sincerely

[INSERT NAME OF DECISION-MAKER]
[INSERT POSITION OF DECISION-MAKER]
[INSERT BRANCH OF DECISION-MAKER]

[INSERT DATE]



Australian Government
Department of the Environment and Energy

PAYMENT DETAILS **[Insert FOI reference i.e. FOI 120211]**

AMOUNT **[Total of charges and if applicable deposit amount]**

PAYMENT BY CHEQUE OR MONEY ORDER OF FULL CHARGES OR DEPOSIT

Please attach this payment slip when paying by cheque or money order payable to **Department of the Environment.**

Post to:

FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA CITY ACT 2601

PAYMENT BY ELECTRONIC FUNDS TRANSFER OF FULL CHARGES OR DEPOSIT

If paying by Electronic Funds Transfer (EFT) please use the following account details:

BSB	092 009
Account No.	115859
Description	[INSERT FOI No. ie FOI120211]

PLEASE NOTE: FAILURE TO PROVIDE THE REFERENCE NUMBER EITHER THROUGH ATTACHING THIS PAYMENT SLIP TO YOUR MANUAL PAYMENT OR INCLUDING IT IN THE DESCRIPTION FIELD OF AN ELECTRONIC PAYMENT MAY RESULT IN THE PAYMENT NOT BEING REPORTED TO THE AREA RESPONSIBLE FOR YOUR FOI REQUEST PRIOR TO THE DATE OF BEING DEEMED WITHDRAWN.

YOUR REVIEW RIGHTS

Internal 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 of the decision made must be made in writing. No particular form is required but it is helpful if you set out in the application the grounds on which you consider that the decision should be reviewed. Your application for an internal review should be sent to one of the following addresses:

Post: FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Email: foi@environment.gov.au

Review by the Information Commissioner

You may request a review of this decision by the Information Commissioner.

If you request an internal review and are unhappy with the result you may also apply for an Information Commissioner review.

If you wish to request a review by the Information Commissioner you must apply to the Information Commissioner within 60 days after the day on which notice of this decision (or an internal review decision) was given to you.

Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Post: GPO Box 5218, Sydney NSW 2001

Fax: 02 9284 9666

Phone: 1300 363 992

Email: enquiries@oaic.gov.au

s22

Subject: FOI XXXXXX - Deemed withdrawal

Dear **[INSERT NAME OF APPLICANT]**

Freedom of Information Request No. [INSERT NUMBER] – Deemed Withdrawal

On **[INSERT DATE]** a letter was sent to you advising that you were required to pay a charge of **[INSERT CHARGES AMOUNT]** before the Department could continue to process your FOI request.

The letter advised you that within 30 days you were required to notify the Department that you either:

- agree to pay the charge,
- wish to contend that the charge has been wrongly assessed, should be reduced or not imposed or both; and if so provide reasons, or
- withdraw the request.

Section 29 of the *Freedom of Information Act 1982* provides that if an applicant fails to undertake one of the above actions within the 30 day period, the request is taken to have been withdrawn. As the Department has not received your payment or any correspondence from you, your request is taken to be withdrawn.

If you have any queries in relation to this letter, please contact the FOI Contact Officer by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[insert sign off]

[SECTION 24A EXEMPTION]

Section 24A(1)(b)(ii)

Documents do not exist

Under subparagraph 24A(1)(b)(ii) of the FOI Act, the Department may refuse access to a document if:

- all reasonable steps have been taken to find document; and
- the Department is satisfied that it does not exist.

Item [ITEM NUMBER] of the request seeks [GENERALLY DESCRIBE INFORMATION]. If the Department held these files, they would usually be held by the [NAME LINE AREA]. To locate the documents, officers of this area conducted searches of their physical files, electronic files held in SPIRE and relevant email accounts [ADD FURTHER SEARCHES IF RELEVANT]. As a result of these searches, no documents falling within the scope of Item [ITEM NUMBER] were identified.

I am satisfied that all reasonable steps have been taken to find documents that fall within the scope of Item [ITEM NUMBER], and that they do not exist.

This is likely because [PROVIDE REASONS AS TO WHY DEPARTMENT DOES NOT HAVE THESE DOCUMENTS].

[END SECTION 24A EXEMPTION]

[SECTION 42 EXEMPTION]

Material exempted under section 42

Legal professional privilege

Section 42 provides that a document is an exempt document if it would be privileged from production in legal proceedings on the ground of legal professional privilege (LPP).

Documents [DOCUMENT NUMBERS] contain correspondence between officers of the Department their legal advisors [and material that could be used to ascertain the content of that correspondence].

At common law (*Grant v Downs* (1976) 135 CLR 674; *Waterford v Commonwealth of Australia* (1987) 163 CLR 54), determining whether a communication is privileged requires a consideration of:

- a) whether there is a legal adviser-client relationship
- b) whether the communication was for the purpose of giving or receiving legal advice, or for use in connection with actual or anticipated litigation
- c) whether the advice given is independent
- d) whether the advice given is confidential.

I have considered the contents of Documents 4 and 4a against this criteria and am of the view that:

- a) There is a legal adviser-client relationship between the Department and solicitors from the Australian Government Solicitor who were engaged to provide the advice.

- b) The communication attached to the brief was brought into existence for the dominant purpose of giving legal advice on a particular legal issue.
- c) The advice was provided by legal counsel acting independently in exercising their professional obligation to provide legal advice.
- d) The advice is confidential, it was provided to a select group of Departmental officers required to have knowledge of legal issue with the understanding that it was confidential, as evidenced by a disclaimer that the advice is privileged and should not be communicated further. This confidentiality has not since been waived.

I am satisfied that this correspondence would be in its entirety privileged in legal proceedings on the ground of LPP and that this privilege has not been waived. I am also satisfied that release the advice would result in 'real harm' to the Department by disclosing advice relating to [GENERALLY DESCRIBE PURPOSE OF ADVICE].

For the reasons above, I consider that the correspondence between officers of the Department their legal advisors [and material that could be used to ascertain the content of that correspondence] within in Documents [DOCUMENT NUMBERS] are exempt pursuant to section 42 of the FOI Act.

[END SECTION 42 EXEMPTION]

[SECTION 45 EXEMPTION]

Material exempted under section 45

Documents obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would found an action, by a person (other than an agency or the Commonwealth), for a breach of confidence.

[Document/documents] [number] [in part] [in full], consist of material that was provided by third parties to the Department under an explicit agreement that the material be kept confidential. To determine whether its disclosure would found an action in confidence (attracting an exemption under section 45), it must meet the following criteria (*Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 14 FCR 434 [443]):

- a) the information must be specifically identified;
- b) the information must have the necessary quality of confidence about it;
- c) the information must have been communicated and received on the basis of a mutual understanding of confidence;
- d) the information must have been disclosed or been threatened to be disclosed without authority; and
- e) the unauthorised disclosure has or will cause the individual to suffer detriment.

Against this criteria, I consider:

- a) The information is specifically identified, being the material that forms [Document/documents] [number] [in part] [in their entirety].
- b) The information has the necessary quality of confidence as it was communicated only to a known or limited group, namely the Department and more specifically, the section within the Department that assessed the referral decision. The information is not common knowledge or otherwise in the public domain and the quality of confidentiality has not been lost over time.
- c) The information was communicated and received on the basis of a mutual understanding of confidence. As referred above, the Department agreed in writing that the material within the documents was to be treated with confidentiality.

- d) The provider of the material has not authorised the Department to disclose the document to third parties.
- e) The provider of the information will suffer detriment if the document were to be released, as their relationship of trust with third parties, to whom the material pertains to, will be damaged. As a result they will be less likely to engage the provider against in a professional capacity.

I have therefore made a decision to exempt Documents [Document/documents] [number] [in part] [in their entirety] under section 45 of the FOI Act.

[END SECTION 45 EXEMPTION]

[SECTION 47C EXEMPTION]

Material exempted under section 47C

Deliberative processes

Section 47C(1) of the FOI Act provides, in part, that where the disclosure of document would disclose matter in the nature of an opinion, advice or recommendation obtained for the deliberative processes involved in the functions of an agency (**deliberative matter**), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if access to it would be against the public interest.

Deliberative matter

[Document][Documents][DOCUMENT NUMBERS] [contain][contains] [DESCRIBE Deliberative matter in general].

These documents evaluate competing arguments and considerations, effectively setting out the thinking processes of the Department in the specific context of [DESCRIBE deliberative process/es in general, including reasons why deliberative].

I therefore consider [Document][Documents][DOCUMENT NUMBERS] [consists][to consist] in [part][their entirety] of deliberative matter, consistent with the definitions of "deliberative matter" put forward in *Re JE Waterford and Department of Treasury (No 2)* [1984] AATA 67 and *Dreyfus and Secretary Attorney-General's Department (Freedom of Information)* [2015] AATA 962.

I am therefore satisfied that [Document][Documents][DOCUMENT NUMBERS], are conditionally exempt under section 47C of the FOI Act.

Whilst I have identified factual material within the documents, it is so intertwined with deliberative matter that if it were to be disclosed, it would reveal the nature of the deliberations. I therefore consider the factual material within the documents to form part of the deliberative matter.

I will consider whether access to this deliberative matter would be contrary to the public interest.

Contrary to the public interest

To determine whether access to the conditionally exempt deliberative matter would be contrary to the public interest, I must consider those public interest factors favouring access to the deliberative matter and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that access to the deliberative matter is contrary to the public interest.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to information:

- a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- b) *inform debate on a matter of public importance;*
- c) *promote effective oversight of public expenditure;*
- d) *allow a person to access his or her own personal information.*

Against these factors, I consider that access to the deliberative matter that forms **[Document][Documents] [DOCUMENT NUMBERS][in part][in full]:**

- a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (section 3(1)(b)) and that the information is a national resource (section 3(3));
- b) would not inform debate on a matter of public importance;
- c) would not promote effective oversight of public expenditure; and
- d) would not allow a person, being the applicant, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the **[DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE]** contained within Documents **[DOCUMENT NUMBERS]:**

(a) could reasonably be expected to prejudice the protection of an individual's right to privacy;

[CHECK PARAGRAPH 6.22 OF THE GUIDELINES TO CONFIRM THERE ARE NO MORE FACTORS RELEVANT TO DECISION]

[IF APPROPRIATE, INSERT ANALYSIS OF PUBLIC INTEREST FACTORS AND/OR REASONING FOR DECISION ON PUBLIC INTEREST]

However, I consider that those interests are outweighed by the public interest factors against disclosure. In my view, disclosure of the documents would **[Insert relevant reasoning as to why disclosure not in the public interest].**

After considering the public interest factors favouring access and those against access,

I consider that the factors against access to outweigh those favouring access, and that access to the deliberative matter discussed above would be contrary the public interest.

I have therefore decided to withhold access to the deliberative matter that forms **[Document][Documents] [DOCUMENT NUMBERS] [in part] [in its entirety][in their entirety]** pursuant to section 47C of the FOI Act.

[END SECTION 47C EXEMPTION]

[SECTION 47F EXEMPTION]

Material exempted under section 47F

Personal privacy

Section 47F(1) of the FOI Act provides that where the disclosure of document would result in an unreasonable disclosure of personal information about any person (including a deceased person), that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if giving access to it would be against the public interest.

Unreasonable disclosure of information

[Document][Documents][DOCUMENT NUMBERS] [contain][contains] [DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE]. I am satisfied that this information is “personal information” for the purposes of the FOI Act.

To determine whether the disclosure of this personal information was unreasonable, I gave regard to the following criteria under 47F(2) of the FOI Act:

- (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 Authority considers relevant.

Against these criteria, I consider that:

- (a) the information is not well known;
- (b) the persons are not known to be associated with the matters dealt with in the document; and
- (c) the information is not available from publicly accessible sources.

Against criteria (d), and consistent with the decision in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437, I considered all relevant circumstances, including the nature of the information, the purpose for which the information was obtained, the likelihood of the information being information which the person concerned would not wish to have disclosed, and whether the information has any current relevance.

With reference to my findings above, I consider that any disclosure of [DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE] contained within the documents would be unreasonable, and therefore that this personal information is conditionally exempt. I will consider whether access to this personal information would be contrary to the public interest.

Contrary to the public interest

To determine whether access to the conditionally exempt personal information would be contrary to the public interest, I must consider those public interest factors favouring access to the personal information and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that access to the personal information is contrary to the public interest.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to information:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

Against these factors, I consider that access to [DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE] contained within Documents [DOCUMENT NUMBERS]:

[ENSURE THAT THE FOLLOWING IS CONSISTENT WITH THE DOCUMENTS]

- (a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (promoting section 3(1)(b)) and that the information is a national resource (section 3(3)).

However, I do not consider that this specific personal information would allow for greater insight into Government decision making (section 3(2)(a)) or that their release

would allow for increased discussion or scrutiny of Government activities (section 3(3));

- (b) would not inform debate on a matter of public importance;
- (c) would not promote effective oversight of public expenditure; and
- (d) would not allow a person, being the applicant, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the [DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE] contained within Documents [DOCUMENT NUMBERS]:

- (a) *could reasonably be expected to prejudice the protection of an individual's right to privacy;*

[CHECK PARAGRAPH 6.22 OF THE GUIDELINES TO CONFIRM THERE ARE NO MORE FACTORS RELEVANT TO DECISION]

[IF APPROPRIATE, INSERT ANALYSIS OF PUBLIC INTEREST FACTORS AND/OR REASONING FOR DECISION ON PUBLIC INTEREST]

After considering the public interest factors favouring access and those against access, I consider that the factors against access to outweigh those favouring access, and that access to the personal information discussed above to be contrary the public interest.

I have therefore decided to withhold access to the conditionally exempt [DESCRIBE PERSONAL INFORMATION AS RECORDED IN SCHEDULE] contained within Documents [DOCUMENT NUMBERS] pursuant to section 47F of the FOI Act.

[END SECTION 47F EXEMPTION]

[BUSINESS INFORMATION EXEMPTIONS]

Material exempted under section 47G(1)(a)
Sensitive business information

Section 47G(1)(a) of the FOI Act relevantly provides that where the disclosure of a document would, or could reasonably be expected to unreasonably affect a person or business in respect of their lawful business affairs, that document is conditionally exempt. The conditionally exempt document may then be withheld from release to the applicant only if access to it would be against the public interest.

Business information

[Document] [Documents][DOCUMENT NUMBERS] [contain][contains] [DESCRIBE INFORMATION CONCERNING A PERSON IN RESPECT OF HIS OR HER BUSINESS OR PROFESSIONAL AFFAIRS OR CONCERNING THE BUSINESS, COMMERCIAL OR FINANCIAL AFFAIRS OF AN ORGANISATION OR UNDERTAKING]. I am satisfied that this information is “business information” for the purposes of the FOI Act.

Unreasonably affect the business affairs of the organisation

[Document] [Documents][DOCUMENT NUMBERS]

I am therefore of the view that the sensitive business information in [Document] [Documents][DOCUMENT NUMBERS] is conditionally exempt. I will now consider whether access to it would be contrary to the public interest.

Contrary to the public interest

To determine whether access to the conditionally exempt sensitive business information would be contrary to the public interest, I must consider those public interest factors favouring access to the information and weigh them against those public interest factors against access. If satisfied that the public interest factors against access outweigh those favouring access, I may decide that access to the sensitive business information is contrary to the public interest.

I did not consider any of the irrelevant factors set out in section 11B(4) of the FOI Act.

Section 11B(3) sets out the public interest factors that favour access to information:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

Against these factors, I consider that access to the sensitive business information in [Document] [Documents][DOCUMENT NUMBERS]:

[ENSURE THAT THE FOLLOWING IS CONSISTENT WITH THE DOCUMENTS]

- (a) would promote the objects of the FOI Act in respect of providing access to information held by the Government (promoting section 3(1)(b)) and that the information is a national resource (section 3(3)).

However, I do not consider that this specific business information would allow for greater insight into Government decision making (section 3(2)(a)) or that their release would allow for increased discussion or scrutiny of Government activities (section 3(3));

- (b) would not inform debate on a matter of public importance;
- (c) would not promote effective oversight of public expenditure; and

- (d) would not allow a person, being the applicant, further access to his or her own personal information.

Paragraph 6.22 of the FOI Guidelines provides a non-exhaustive list of public interest factors against access. Of these factors, I consider that access to the sensitive business information contained in [Document] [Documents][DOCUMENT NUMBERS]:

- (h) *could reasonably be expected to prejudice an agency's ability to obtain confidential information*
- (i) *could reasonably be expected to prejudice an agency's ability to obtain similar information in the future*

[CHECK PARAGRAPH 6.22 OF THE GUIDELINES TO CONFIRM THERE ARE NO MORE FACTORS RELEVANT TO DECISION]

[IF APPROPRIATE, INSERT ANALYSIS OF PUBLIC INTEREST FACTORS AND/OR REASONING FOR DECISION ON PUBLIC INTEREST]

After considering the public interest factors favouring access and those against access, I consider that the factors against access to outweigh those favouring access, and that access to the personal information discussed above to be contrary the public interest.

I have therefore decided to withhold access to the conditionally exempt sensitive business information in [Document] [Documents][DOCUMENT NUMBERS] pursuant to section 47G(1)(a) of the FOI Act.

[END SECTION 47G(1)(a) EXEMPTION]

[END BUSINESS INFORMATION EXEMPTIONS]

s22

Sent: Friday, 22 June 2018 11:24 AM
Subject: FOI 18XXXX seeking a decision outcome

Hi **line area contact**

Please find attached proposed documents for release and document schedule including our comments.

Could you please review the documents and advise if you have any concerns with the proposed release. If you agree with the proposed release please provide the following email to the delegate and meet with him/her to get a decision outcome.

Happy to meet and discuss.

Many thanks

Dear **decision-maker**

[cc: FOI Contact Officer inbox]

Re: FOI request **XXXXXX**

The Department received an FOI request from **FOI applicant** under the Freedom of Information Act 1982 (the **FOI Act**) seeking the following documents:

[Item 1] **FOI scope**

XXX formal consultation was undertaken. **If undertaken - advise if the formal consultation outcome.**

We propose the following decision for your consideration:

- **grant access** to **[LIST DOCUMENT NUMBERS]** in full;
- **grant access** to **[LIST DOCUMENT NUMBERS]** in part, as material that I consider exempt pursuant to **[LIST SECTIONS OF FOI ACT]** of the FOI Act, or irrelevant to the the request pursuant to section 22 of the FOI Act; and
- **refuse access** to **[LIST DOCUMENT NUMBERS]**, as of material that I consider exempt pursuant to **[LIST SECTIONS OF FOI ACT]** of the FOI Act.

The document schedule and documents proposed for release are attached for your review and decision outcome.

Please let me know your decision outcome/if you require any further information by **COB XXXXXXXX**. The FOI team will draft the decision letter(s) for your consideration/signature on/by **XXXXXXX**.

The decision is due to made by you on or by **XXXXXXX**.

Regards



FOI Applicant name
address

By email: XXXXXX

Dear XXXXXX

**Freedom of Information Request No. XXXXXX
Notification of Internal Review Decision**

On XXXXX the Department of the Environment and Energy (the **Department**) received an application for internal review of the decision on FOI XXXXXX, your request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). The internal review had been sought by a third party whom was consulted during the initial decision making process, and was limited to the decision on XXXXXX.

I am writing to inform you of my decision on your internal review request.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

I have decided to affirm the primary decision/vary the primary decision in full/part by:

- **affirming access** to <Document><Documents> [LIST DOCUMENT NUMBERS] in full;
- **affirming** those parts of the <Document><Documents> [LIST DOCUMENT NUMBERS] that were decided to be exempt under section XXXXX and XXXXXX of the FOI Act, or irrelevant to the request pursuant to section 22 of the FOI Act; and
- **refusing access** to further provisions within <Document><Documents> [LIST DOCUMENT NUMBERS], on the basis that they also attract an exemption under section XXXXX and XXXXXX of the FOI Act.

ATTACHMENT A contains information regarding your review rights, should you wish to seek review of my decision.

Third party review rights

My decision does not accept the submissions of a third party in full with respect to XXXXXX. I am required to withhold access to Documents XX so that the third party has the opportunity to seek a review of my decision.

The document(s) will be provided to you either 30 days after the third party are notified of my decision, or otherwise when their review rights are exhausted.

Material considered in making my decision

I had regard to:

- the request for internal review;
- the primary decision on FOI XXXXXX;
- the scope of the FOI request;
- the content of Document(s) XXXX;
- the relevant provisions in the FOI Act;
- responses to third party consultation as part of the primary decision;
- advice from subject matter experts within the Department; and
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982 (the FOI Guidelines)*.

Reasons for decision

At the primary decision I found that XXXXXXXX.

The application for internal review sought XXXXXX

If applicable - I disagreed with the submission that XXXXXX.

I decided that XXXXX.

I also decided to affirm the primary decision for XXXXXX.

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

Delegate
Title
Division

Date

ATTACHMENTS:

A. Your review rights



YOUR REVIEW RIGHTS

You may seek review of this internal review decision externally by the Information Commissioner (Information Commissioner review).

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

- Online:** <https://www.oaic.gov.au/freedom-of-information/foi-review-process>
- Post:** GPO Box 5218, Sydney NSW 2001
- Fax:** 02 9284 9666
- Phone:** 1300 363 992
- Email:** enquiries@oaic.gov.au

TO: FAS

CC: Original Decision Maker, FOI Inbox, Original LACO, Margaret Tregurtha, s22 Kate Lalor,
Original Legal Officer, Deputy Secretary

Hi XXXX

The Department received the attached internal review request pursuant to the *Freedom of Information Act 1982* from applicant.

The applicant is seeking a review of the INSERT ORIGINAL FOI MATTER NO (see attached).

Internal reviews are normally decided by the First Assistant Secretary with functional responsibility for the subject matter of the request, which we understand to be yourself. Please advise if you would prefer an alternative person to make a decision on the review.

No action is required from you or members of your division at this time. A Senior Legal Officer will provide preliminary recommendations on the review by **14 days from receipt.**

The statutory deadline for decision on the review is XXXX.

If you would like to discuss the FOI request or FOI processes generally, please do not hesitate to contact the FOI team.

Note: attached original decision letter



[TEMPLATE – FOI INTERNAL REVIEW DECISION LETTER]

[APPLICANT NAME]

[APPLICANT ADDRESS]

Email: **[APPLICANT EMAIL]**

Dear **[APPLICANT NAME]**

**Freedom of Information Request No. [FOI NUMBER]
Internal Review**

On **[DATE]** the Department of the Environment and Energy (the **Department**) made a decision on FOI **[FOI NUMBER]**, a request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). This decision is at **ATTACHMENT B**.

On **[DATE]** you sought an internal review of FOI **[FOI NUMBER]**. I am writing to inform you of my decision on your internal review request.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

I have decided to **[CHOOSE ONE]** **[affirm the primary decision on FOI [FOI NUMBER].]** **[set aside the primary decision on FOI [FOI NUMBER] and make the following decision in its place:]**

[IF SET ASIDE]

I have decided to:

- **grant access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** in full;
- **grant access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** in part, as **<it contains><they contain>** material that I consider exempt pursuant to **<section><sections>** **[LIST SECTIONS OF FOI ACT]** of the FOI Act, or irrelevant to the request pursuant to section 22 of the FOI Act; and
- **refuse access** to **<Document><Documents>** **[LIST DOCUMENT NUMBERS]**, as **<it><they>** **<consists><consist>** of material that I consider exempt pursuant to **<section><sections>** **[LIST SECTIONS OF FOI ACT]** of the FOI Act.

ATTACHMENT A contains information regarding your review rights, should you wish to seek review of my decision.

Material considered in making my decision

I had regard to:

- the request for internal review
- the primary decision on FOI [FOI NUMBER]
- the scope of the FOI request
- the content of the <document><documents> subject to the review;
- the relevant provisions in the FOI Act;
- [IF RELEVANT] third party responses to third party consultation; and
- advice from subject matter experts within the Department;
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

Reasons for decision

Your application for internal review [and further contentions of [DATE]] submitted that the original decision should be reviewed on the following grounds:

- [GROUND 1]
- [GROUND 2]
- [GROUND 3]
- Etc.

I will address each of the above grounds in turn.

Note: The grounds considered as part of the internal review should only be those raised within the application. Further, there is no need to expand upon those reasons stated in the primary decision if the grounds were clearly addressed.

[GROUND 1]

Explain reasons

[GROUND 2]

Explain reasons

[GROUND 3]

Explain reasons

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[DELEGATE NAME]

[DELEGATE POSITION]

[DATE]

ATTACHMENTS:

A. Your review rights

B. FOI [FOI NUMBER] Access decision letter, dated [DATE]



YOUR REVIEW RIGHTS

You may seek review of this internal review decision externally by the Information Commissioner (Information Commissioner review).

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>
Post: GPO Box 5218, Sydney NSW 2001
Fax: 02 9284 9666
Phone: 1300 363 992
Email: enquiries@oaic.gov.au



[TEMPLATE – FOI INTERNAL REVIEW OF CHARGES DECISION LETTER]

[APPLICANT NAME]

[APPLICANT ADDRESS]

Email: **[APPLICANT EMAIL]**

Dear **[APPLICANT NAME]**

Freedom of Information Request No. [FOI NUMBER]
Internal Review of charges

On **[DATE]** the Department of the Environment and Energy (the **Department**) decided to issue charges for processing of your FOI **[FOI NUMBER]**, a request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). This decision is at **ATTACHMENT C**.

On **[DATE]** you sought an internal review of charges for FOI **[FOI NUMBER]**. I am writing to inform you of my decision on your internal review request.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

I have decided to **[CHOOSE ONE]** [uphold charges issued for the processing of FOI **[FOI NUMBER]**]. [reduces the charges issued for the processing of FOI **[FOI NUMBER]** by XX%, reducing the charges issued from \$XXXX to \$XXX]. [waive the charges in full].

ATTACHMENT A contains information regarding your review rights, should you wish to seek review of my decision. **[IF APPLICABLE]** **ATTACHMENT B** provides instructions on how to pay the charge or deposit issued for the processing of this request.

Material considered in making my decision

I had regard to:

- the request for internal review
- the decision to issue charges for the processing of FOI [FOI NUMBER]
- the scope of the FOI request
- the content of the <document><documents> subject to FOI [FOI NUMBER];
- the relevant provisions in the FOI Act;
- [IF RELEVANT] third party responses to third party consultation; and
- advice from subject matter experts within the Department;
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

Reasons for decision

Background to decision

On [DATE] you made a request to the Department under the FOI Act for internal review [and further contentions of [DATE]] [IF APPLICABLE] which was subsequently refined on [DATE] to seek:

[INSERT FOI SCOPE]

The Department identified XX documents that fell within the scope of this request. On [DATE] the Department decided that you were liable to pay a charge of \$XXX for the processing of this request. On [DATE] you sought an internal review of the decision, seeking reduction/waiver of the charges on the following grounds:

- [GROUND 1]
- [GROUND 2]
- [GROUND 3]
- Etc.

Reduction or waiver of charges under the FOI Act

Under section 29(4) of the FOI Act an applicant may contend that charges issued in respect of a request should be reduced or not imposed for the reasons set out in section 29(5).

Your application for review submitted that the charges imposed for the processing of the request be waived/reduced under section 29(5)(b), that the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public (section 29(5)(b)) because:

- (a) the matter is one which interests a large sector of the Australian public;
- (b) the request is being made by a person with a means of bringing the matter to the attention of a large sector of the Australian public; and
- (c) the decision in *Butler v ASIC [2017] AICmr 18* supports your claim that charges should be waived, because it held that requests which promote the objects of the FOI Act, are in

the general public interest and meet the criteria in (a) and (b) above should attract a full waiver of charges.

Your application for internal review did not submit that payment of the charge would cause you financial hardship (section 29(5)(a)), and I have therefore not considered this as part of the internal review.

I will address each of your grounds for review in turn.

Note: The grounds considered as part of the internal review should only be those raised within the application. Further, there is no need to expand upon those reasons stated in the primary decision if the grounds were clearly addressed.

[GROUND 1]

Explain reasons

[GROUND 2]

Explain reasons

[GROUND 3]

Explain reasons

The matter is one that interests a large sector of the Australian public

The FOI Guidelines provide that “*when considering the public interest, it is important that the agency or minister directs its attention to the advancement or the interest or welfare of the public, and this will depend on each particular set of circumstances*” (at 4.83).

In practice, the “*circumstances*” in which the Information Commissioner and AAT have decided waive or reduce charges are where there is a clear, identifiable matter in the subject matter of the documents, and that subject is the source of current debate.

The FOI Guidelines provide that applicants “*should identify or specify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from this disclosure*” (at 4.81) when seeking for charges to be reduced or waived on public interest grounds.

XXXXX.

For this reason, I consider that it is unclear whether the “matter” is one that interests a large sector of the Australian public.

[If applicable (eg journalists)] The request is being made by a person with a means of bringing the matter to the attention of a large sector of the Australian public

I have taken the application’s reference to yourself having the ability to bring the “matter” to the attention of a large sector of the Australian public to be a reference to your status as a **journalist**.

Both the FOI Guidelines and the Information Commissioner have provided guidance on whether the applicant's status as a journalist lends weight to whether there is an inherent public interest in disclosing documents under the FOI Act.

The FOI Guidelines provide at 4.82 that "*There is no presumption that the public interest test is satisfied by reason only that the applicant is a member of Parliament, a journalist or a community or non-profit organisation*" (at 4.82). The Information Commissioner has affirmed the position in the Guidelines, but has also found that "*it is necessary to go beyond the status of the applicant and to look at other circumstances*" (*'BU' and Department of Immigration and Border Protection [2014] AICmr 42; Besser and Department of Industry, Innovation, Science, Research and Tertiary Education [2012] AICmr 13*).

In *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection [2016] AICmr 54* the Information Commissioner recognised that "*depending on the nature of the documents at issue, it was likely that a media outlet pursuing investigative journalism could increase any benefit flowing from the release of the documents. Accordingly, in determining the public interest value of the requested documents, each case must be examined on its own merits.*"

On the basis of the above, I recognise that where it is found that there is a public interest in disclosing certain documents, that the subsequent disclosure of those documents to a journalist or media outlet can increase that public interest.

However, the mere fact that an applicant is a journalist does not, in itself, give rise to a public interest in disclosing certain documents. A decision to waive or reduce charges must first find that there would be a public interest in their disclosure. Once this is ascertained, the delegate can consider whether the applicant's standing as a journalist can increase the benefit that flows from the disclosure of those documents.

If applicable (eg journalists) The decision in *Butler v ASIC [2017] AICmr 18* supports a waiver of charges for this request

In effect, the application submitted that the Information Commissioner found in *Butler v ASIC [2017] AICmr 18 (Butler)* that charges should be waived for a request if the documents subject to the request:

- (a) would interest a large sector of the Australian public; and
- (b) the were sought by a person with a means of bringing the matter to the attention of a large sector of the Australian public

Whilst the Information Commissioner did not explicitly refer to whether a large sector of the Australian public would be "interested" in the content of the documents, he did find that the documents related to a matter of public debate, finding that disclosure of the documents would reveal the "*extent ASIC has allowed [certain financial institutions] to contribute to the content of its media releases*" at a time when they had come under public criticism for this specific issue. The Information Commissioner also found that a benefit would flow from the disclosure of the documents to the public, because "*ASIC's administration of the law covers hundreds of thousands of [financial institution's] customers*".

The Information Commissioner also considered whether the applicant's status as a journalist would give weight to issuing charges for the request, as they may derive a commercial benefit from the disclosure of the documents. On this point the Information Commissioner found "*the fact that a media organisation may derive commercial benefit from publication of a story based on an FOI request is a relevant consideration, but is not alone a basis for declining to reduce or*

waive a charge". The Information Commissioner did not give regard to the applicant's status as a journalist when assessing the public interest in disclosure of the documents, or whether their status would increase that public interest.

The decision in Butler [XXXX] from your request because in that matter, the disclosure of the documents granted further insight into a matter of current debate, and there was an identified section of the public that would benefit from the disclosure of that information.

The decision otherwise did not consider whether the applicant's status would increase the public interest in disclosing documents in response to an FOI request, only that their status did not give rise to declining to reduce or waive the charges issued for its processing.

State if you agree/agree in part/disagree with the submission.

On this basis I [have decided to waive the charges in full] [have decided that the charges issued for the processing of the request should be reduced by XX%, from \$XX to \$XX] [do not consider a reduction is justified, because XXX].

[If applicable] I have also determined that you may pay a deposit of \$XX (25% of the total amount) to allow for the processing of your request to continue.

Please note that if you decide to pay the deposit in lieu of the charges, the documents subject to the request will not be disclosed until the remainder of the charge is paid.

Required actions

Within **30 days** of receipt of this notice you must either:

- pay the charge or deposit;
- contend that the charge has been wrongly assessed, should be reduced or not imposed; or
- withdraw your FOI request.

If you fail to take one of these actions within **30 days** of receiving this notice, your FOI request will be taken to have been withdrawn.

Payment of charge or deposit

To pay the charge or deposit, please follow the directions provided at **ATTACHMENT B**.

If you decide to pay a deposit, the documents subject to the request will not be disclosed until the remainder of the charge is paid. Once a deposit is paid, there is no statutory deadline for payment of the remainder of the charge.

Amendment of request

It is open to you to amend your request so that less documents are captured within the scope. This may reduce the time required to process your request, and in turn the charges issued for it.

If you wish to amend the scope of your request, please contact the Department's FOI team at foi@environment.gov.au.

Suspension of FOI clock

Pursuant to section 31 of the FOI Act, the statutory timeframe for processing your request is suspended from the day that you receive this notice until:

- the day the Department receives payment of the charge (in full or the required deposit); or
- the day the Department decides not to impose the charge.

Yours sincerely

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[DELEGATE NAME]

[DELEGATE POSITION]

[DATE]

ATTACHMENTS:

A. Your review rights

B. Payment of Charge – FOI request



YOUR REVIEW RIGHTS

You may seek review of this internal review decision externally by the Information Commissioner (Information Commissioner review).

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 60 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

- Online:** <https://www.oaic.gov.au/freedom-of-information/foi-review-process>
- Post:** GPO Box 5218, Sydney NSW 2001
- Fax:** 02 9284 9666
- Phone:** 1300 363 992
- Email:** enquiries@oaic.gov.au



PAYMENT OF CHARGE
Freedom of Information Request

REFERENCE NUMBER	FOI XXXXXX
AMOUNT	\$XX (Payment in full) \$XX (Deposit)

PAYMENT BY ELECTRONIC FUNDS

Payment by Electronic Funds Transfer (EFT) can be made using the following details:

BSB 092-009
Account No. 115859
Description FOI **XXXXXX**

PAYMENT BY CHEQUE OR MONEY ORDER

Please include this Payment of Charge sheet with your cheque or money order.

Please make the cheque or money order payable to **Department of the Environment and Energy**. You may post it to the below address:

FOI Contact Officer
General Counsel Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA CITY ACT 2601

PLEASE NOTE: Failure to include the correct reference number with your payment may result in delays in processing your request. In a worst case scenario, your request may be treated as withdrawn. Please take care to include the correct reference number with your payment.



[TEMPLATE – THIRD PARTY FOI INTERNAL REVIEW DECISION LETTER]

[THIRD PARTY NAME]

[ADDRESS]

Email: **[THIRD PARTY EMAIL]**

Dear **[THIRD PARTY NAME]**

Freedom of Information Request No. [FOI NUMBER]
Internal Review

On **[DATE]** the Department of the Environment and Energy (the **Department**) made a decision on FOI **[FOI NUMBER]**, a request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**). The notification of the decision is at **ATTACHMENT C**.

On **[DATE]** you sought an internal review of FOI **[FOI NUMBER]** in respect of the decision to **XXXXXX**. I am writing to inform you of my decision on the internal review request.

Authority

I am authorised by the Secretary of the Department under section 23 of the FOI Act to make a decision in relation to your request.

Decision

I have decided to **[CHOOSE ONE]** **[affirm the primary decision on FOI [FOI NUMBER].]** **[vary the primary decision to XXXX in part/full by]**

- **affirming** **<Document><Documents>** **[LIST DOCUMENT NUMBERS]**;
- **affirming that those parts of** **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** that were decided to be exempt under **section XXX and XXXX** of the FOI Act continue to be exempt, or irrelevant to the the request pursuant to section 22 of the FOI Act; and
- **refuse access** to further provisions within **<Document><Documents>** **[LIST DOCUMENT NUMBERS]**, on the basis that they also attract an exemption under **<section><sections>** **[LIST SECTIONS OF FOI ACT]** of the FOI Act.

ATTACHMENT A contains information regarding your review rights, should you wish to seek review of my decision. If you decide not to seek a review of the decision **<Document><Documents>** **[LIST DOCUMENT NUMBERS]** will be released to the FOI applicant in the form at **ATTACHMENT B**.

Material considered in making my decision

I had regard to:

- the request for internal review
- the primary decision on FOI [FOI NUMBER]
- the scope of the FOI request
- the content of the <document><documents> subject to the review;
- the relevant provisions in the FOI Act;
- advice from subject matter experts within the Department; and
- the *Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982* (the **FOI Guidelines**).

Reasons for decision

Your application for internal review [and further contentions of [DATE]] submitted that the original decision should be reviewed on the following grounds:

- [GROUND 1]
- [GROUND 2]
- [GROUND 3]
- Etc.

I will address each of the above grounds in turn.

Note: The grounds considered as part of the internal review should only be those raised within the application. Further, there is no need to expand upon those reasons stated in the primary decision if the grounds were clearly addressed.

[GROUND 1]

Explain reasons

[GROUND 2]

Explain reasons

[GROUND 3]

Explain reasons

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[DELEGATE NAME]

[DELEGATE POSITION]

[DATE]

ATTACHMENTS:

A. Your review rights

B. Documents **XXXXX** in the form to be released to the applicant

C. FOI **[FOI NUMBER]** Access decision letter, dated **[DATE]**



YOUR REVIEW RIGHTS

You may seek review of this internal review decision externally by the Information Commissioner (Information Commissioner review).

Information Commissioner review

An Information Commissioner review is a review undertaken by the Information Commissioner (IC). The IC will make a decision on the disclosure of the documents, giving regard to any submissions from the Department, yourself as the applicant, and any third parties consulted as part of this decision.

There is no statutory timeframe for a decision on an IC request.

If you wish to request a review by the IC, you must apply to the IC within 30 days after the day you received it. Further details on how to request an Information Commissioner review can be obtained from the Office of the Australian Information Commissioner:

Online: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>
Post: GPO Box 5218, Sydney NSW 2001
Fax: 02 9284 9666
Phone: 1300 363 992
Email: enquiries@oaic.gov.au

s22

Sent: Monday, 29 April 2019 2:33 PM
Subject: IR XXXXXX - Acknowledgement of internal review application

To: Applicant
Subject: IR XXXXXX – Acknowledgement of internal review application

Dear XXXXXX

Freedom of Information Request no. XXXXXX

The Department of the Environment and Energy (the Department) acknowledges receipt of your application for internal review under the *Freedom of Information Act 1982* (FOI Act) dated [**insert date of request**].

The Department is required to make a decision within 30 days after the day a valid application is received. This 30 day processing period may only be extended by the Information Commissioner. If the processing period is extended, you will be informed of the extension and the reasons for it.

The statutory deadline for providing a decision on this request is currently XXXX.

We will contact you at this email address. Please advise if you would prefer us to use an alternative means of contact.

If you have any questions, please contact the FOI Contact Officer on (02) 6274 2098.

Regards



TEMPLATE – FOI IC REVIEW SUBMISSION

Office of the Australian Information Commissioner
Level 3, 175 Pitt Street
SYDNEY
NSW 2000

Email: enquiries@oaic.gov.au

Dear **[OAIC CASE MANAGER NAME]**

**Information Commissioner Review MRXX/00XXX
Freedom of Information Request No. [FOI NUMBER]**

I refer to your email of **[DATE]** to the Department of the Environment and Energy (the **Department**) regarding **[an internal review of]** FOI **[FOI NUMBER]**, a decision made under the *Freedom of Information Act* 1982 (the FOI Act). Your email seeks certain documents and a submission from the Department with respect to that decision.

The Department agrees that this submission letter, with **ATTACHMENTS A** and **D**, may be shared with the applicant. The Department does not consent that the remaining Attachments be disclosed to the applicant at this time.

Specific documents and information sought

Documents subject to the review

The applicant is seeking review of the Department's **[internal review]** decision on FOI **[FOI NUMBER]** in respect of **[NUMBER OF DOCUMENTS]** **[document][documents]**, being **[Document][Documents]** **[LIST DOCUMENT NUMBERS]** (the **[document][documents]** in contention).

As requested by your email, the following documents are **attached** to this letter:

- the FOI request **[for internal review]** is at **ATTACHMENT A**;
- a marked up copy of the **[document][documents]** in contention is at **ATTACHMENT B**;
- a copy of the **[document][documents]** without redactions is at **ATTACHMENT C**; and
- the Department's decision **[on the Internal Review]** is at **ATTACHMENT D**.

Information on third parties

[IF THIRD PARTIES WERE NOT CONSULTED IN RESPECT OF THE DOCUMENTS IN CONTENTION]

The Department did not formally consult with any third parties regarding the documents in contention.

[IF THIRD PARTIES WERE CONSULTED IN RESPECT OF THE DOCUMENTS IN CONTENTION]

As part of the primary decision on this request, the Department consulted with **[COMPANY NAME]**, whom made **[NUMBER][submission][submissions]** regarding the disclosure of the documents in contention[, and further sought an internal review of the decision on **[DATE]**,

reaffirming those submissions]. Their [submission][submissions] [is][are] at [ATTACHMENT][ATTACHMENTS] X [and X].

The Department issued a notice pursuant to section 54P of the FOI Act to [COMPANY NAME] on [DATE]. This notice is at ATTACHMENT [X][X]. [Note: Ensure section 54P notice is issued prior to making submission].

Over the course of the request [and internal review], the contact persons we used for [COMPANY NAME] are:

[LIST CONTACT DETAILS – name, email, phone number]

Department's submission in support of the internal review decision

[INSERT REASONS HERE]

Further assistance

The FOI Contact Officer in the Department can be contacted by telephone on 02 6274 2098 or by email at foi@environment.gov.au.

Yours sincerely

[DECISION MAKER NAME]

[DECISION MAKER POSITION]

[DATE]

ATTACHMENTS:

- A. FOI request [for internal review]
- B. Documents in contention (Marked up)
- C. Documents in contention (No redactions)
- D. Decision on [request][internal review]
- E. [THIRD PARTY NAME] submission dated [DATE]
- F. Section 54P Notice issued to [THIRD PARTY NAME]

To: Decision-maker (and line area contact if known)

CC: FOI inbox and LO/SLO

Dear XXXXXX

You have been nominated as the decision maker for the **attached** request received from XXXXX under the *Freedom of Information Act 1982*.

As advised, [LACO NAME] has been appointed as Line Area Contact Officer (**LACO**), who will have the primary responsibility for ensuring that the tasks below are completed by the specified date.

[IF ADVISORS APPOINTED] The legal advisors for this request are [LEGAL ADVISOR NAMES]. Feel free to contact them with any questions you or your team may have.

Once you have appointed your team, it would be great if they could contact the General Counsel Branch before taking any action so that we can discuss what they'll need to do to progress this request - we understand it can be a bit confusing at first.

The statutory deadline for the request is currently [STATUTORY DEADLINE DATE].

So that we can meet this deadline comfortably, could you please ensure that, the LACO and supporting staff have completed the *Search, Retrieval and Sensitivity Analysis Minute* and the tasks specified within it by [DATE 10 DAYS AFTER RECEIPT OF REQUEST].

These tasks are to:

- Search for and retrieve the documents subject to the request
- Prepare the documents consistent with the processes in the *FOI Processing Guide* (including removing duplicates, converting the documents to PDF and providing them with appropriate filenames)
- Identify name/staff details and other sensitivities on the documents – either electronically using Adobe or by highlighting relevant sections
- Complete the FOI document schedule, which includes advising on any potential sensitivities within the documents (and consultation if required)
- Confirm those recommendations with yourself, to ensure that the advice is consistent with your views
- Provide the documents and advice captured within the document schedule to the FOI team.

The Line Area Checklist may be of assistance to those staff undertaking the above tasks. Also the FOI process flowchart, provides an overview of how the request will progress.

If the request appears to be excessively large, let us know immediately – we can assist with making the request smaller, but our opportunity to do so effectively is limited.

Could you please ensure that the Minister's Office are informed of any issues that may arise during this request that would affect their interests.

If you require any assistance or would like to discuss the FOI process please do not hesitate to contact me on (02) 6274 2098 or the FOI Contact Officer at foi@environment.gov.au.

Kind regards

FOI Contact Officer



FOI REQUESTS FOR MINISTERIAL DOCUMENTS

This guidance note sets out the Department's approach to processing requests that seek documents held by the Minister or the Minister's office.

How requests are made on the Minister or the Minister's office

Under the FOI Act, the Department and the Minister are treated as separate agencies. In applying the Act, the Minister includes the Minister's office.

Requests for ministerial documents can be made directly to the office or through the Department.

If an FOI request is received by the Department, it is taken to be seeking Departmental documents only unless it explicitly identifies that it seeks documents held by the Minister or office.

Processing of ministerial FOI requests

The Minister and their Chief of Staff (and any other staff authorised by the Minister) make decisions under the FOI Act for ministerial FOI requests.

The Department's General Counsel Branch is usually asked to assist in processing a ministerial FOI request.

FOI requests made upon the Department that seek ministerial documents

If a request is made on the Department that, in part or full:

- seeks documents that would likely be held exclusively by the Minister; or
- relates to a subject matter more closely connected with the functions of the Minister;

the Department may ask the Minister's office to accept a full or partial transfer of the request.

If accepted, the transferred request will then be processed as if it had been made directly on the Minister's office. If the request was only partially transferred to the Minister's Office, the Department will continue to process the part that was not transferred.

What ministerial documents can be requested?

Under the FOI Act, 'document' is defined very broadly and includes all paper records as well as electronic communications and various other non-paper records.

However, not every document held by the Minister or their office can be the subject of an FOI request. Requests may only be made for an 'official document of a Minister' as defined in the FOI Act. This means a document held in the Minister's capacity as a Minister and which relates to the affairs of an agency or Department.

The following are not official documents of a Minister:

- personal documents of a Minister or their staff
- documents of a party political nature, and
- documents held in the Minister's capacity as a local member of parliament not dealing with the Minister's portfolio responsibility.

To be covered by the FOI Act the ministerial document must be in the possession of the current Minister or office. This means:

- If the Minister has received and returned a document such as a briefing from the Department, and has not retained a copy of it, the document is no longer an official document of the Minister.
- Requests for documents that are held by a former Minister at the time the request is lodged are not covered by the FOI Act.

Key contacts:

s22

(02) 6274 2098

FOI@environment.gov.au

Please note that the information contained in this Legal Guidance Note is provided to Departmental staff for general information only. It is not legal advice and should not be relied upon as if it was legal advice. If you require specific legal advice about an issue, please contact the General Counsel Branch.

Last updated on **9 October 2018**.