



s47F

Email: s47F

Dear s47F

**Freedom of Information Request No. 191014
Decision on Access**

I refer to your request of 25 October 2019 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:

Any documents that reference (a) travel costs incurred by the City of Sydney in 2017-18 or (b) the City of Sydney Annual Report 2017-18 or (c) claims made by the Minister for Energy and Emissions Reduction (the Minister) relating to travel costs incurred by the City of Sydney in 2017-18 or the City of Sydney Annual Report 2017-18, including, but not limited to:

- * *correspondence between the Minister for Energy and Emissions Reduction and the City of Sydney*
- * *any purported extract of the City of Sydney Annual Report 2017-18 provided by the Minister's office to the Daily Telegraph in September 2019*
- * *any document that shows how the purported extract of the City of Sydney Annual Report 2017-18 provided by the Minister's office to the Daily Telegraph in September 2019 came into the possession of the Minister or his office*
- * *talking points prepared by the Prime Minister's office and/or the Ministers office and/or the Minister's department for use by the Minister in the period 24-25 October 2019*
- * *responses to media inquiries, including, but not limited to, email and text messages; and*
- * *records of communication with the Minister and/or his office, including, but not limited to, email, text messages and messages sent using encrypted messaging apps*

This request excludes duplicate documents.

The names of staff employed under the Members of Parliament (Staff) Act 1984 that appear on documents captured by the request are not excluded from the 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

The Department has identified four documents relevant to the scope of your request.

I have decided to **grant access** to documents 1 and 2 in full. I have decided to **refuse access** to documents 3 and 4 as they consist of material that I consider to be exempt from release under section 47C 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**.

Material considered in making my decision

I had regard to:

- the scope of the FOI request;
- the content of the documents subject to your request;
- 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

Material exempted under section 47C - Deliberative processes

Section 47C(1) of the FOI Act provides, in part, that where the disclosure of a 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

Documents 3 and 4 comprise Departmental input to a process that was not complete at the time the documents were created, and which remains incomplete at this time.

I therefore consider the documents consist in their entirety of deliberative matter, consistent with the definitions of "deliberative matter" in the FOI Act and Guidelines.

The documents are, therefore, conditionally exempt under section 47C of the FOI Act.

The exemption under section 47C will apply if I also consider that 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.

Section 11B(3) sets out the public interest factors that favour access to information. These are that disclosure would:

- 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 documents 3 and 4:

- 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)); and
- b) could inform debate on a matter of public importance.

I have also considered the public interest factors against granting access to the documents. The documents contain information from the preliminary stages of an ongoing process. Granting access to the documents at this stage would:

- impact negatively on the deliberative process to which the documents relate, as it would involve the premature release of the documents in isolation prior to the conclusion of the process; and
- reasonably be expected to undermine the conduct of similar processes by the Department in the future if release of documents of this kind while the process was ongoing became the usual course.

After considering the public interest factors favouring access and those against access, I consider that the factors against access outweigh those favouring access, and that access to the deliberative matter discussed above would be contrary to the public interest.

In making this decision, I did not take into account any of the irrelevant factors set out in section 11B(4) of the FOI Act.

I have therefore decided to withhold access to documents 3 and 4 in their entirety pursuant to section 47C of the FOI Act.

Disclosure Log

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

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



Helen Bennett
First Assistant Secretary

25 November 2019

ATTACHMENTS:

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



Australian Government

Department of the Environment and Energy

ATTACHMENT A

FOI 191014 Schedule of Documents

No	Description	Decision
1	Letter to City of Sydney Mayor Subject: Response to City of Sydney Mayor's letter	<i>Release in full</i>
2	Letter to Minister Taylor from City of Sydney Mayor Subject: Response to Minister's letter	<i>Release in full</i>
3	Email dated 25 October 8.52am	<i>Exempt in full – section 47C</i>
4	Email trail dated 25 October 3.23pm	<i>Exempt in full – section 47C</i>



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