



Our reference: FOI 186/15/16



By email: 



NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your request of 5 January 2016 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

Latest Senate Estimates Brief relating to water and/or ground contamination; and Latest brief sent to the Minister for Defence relating to water and/or ground contamination.

Background

2. On 7 January 2016, Ms Theresa Stinson, Assistant Director – Media Case Management, wrote to you to advise of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. You advised Ms Stinson on 1 February 2016 that the required deposit had been paid. Following discussion with Ms Stinson, processing of your request was re-started on this date. Accordingly, the statutory deadline for you to receive a response on this request is 22 February 2016.

3. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

FOI decision maker

4. I am an accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

5. The identified documents are:

Document 1: Senate Estimates Brief – ID Legacy contamination on the Defence estate from use of fire fighting foam containing Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA) – dated 20 October 2015;

Document 2: Ministerial Correspondence – Interim Defence Perfluorinated Chemicals (PFC) Contamination National Plan – dated 17 December 2015.

Decision

6. I have decided to release Document 1 intact, and to deny access to Document 2 under section 47C [public interest conditional exemptions – deliberative processes] of the FOI Act.

Material taken into account

7. In making my decision, I had regard to:

- a. the terms of your request;
- b. the content of the identified documents in issue;
- c. relevant provisions in the FOI Act;
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
- e. advice from relevant departmental officers.

Reasons for decision – Document 2

8. Upon examination of Document 2, I found that it contained material that would be considered deliberative in nature. The document sets out the Interim Defence Perfluorinated Chemicals Contamination National Plan with recommendations for consideration by the Minister for Defence.

9. Document 2 is part of a process in the development of sensitive policy on which the Minister has not reached a final policy position. Development of a policy position is often an iterative process between a department and a Minister. I have determined that the document should remain confidential while the policy development process is continuing. In due course, a national plan will be announced publicly.

10. While I note that the document contains some purely factual material, that factual material is related to the provision of the advice and the plan itself. Release of such factual material would, in itself, reveal options under consideration.

11. I have taken into account the Guidelines at paragraph 6.57 and am satisfied that the document does not contain ‘operational material’ as defined by section 8A [information to be published – what is *operational information*?] of the FOI Act. I am also satisfied that the material relates to the functions of the agency as described in paragraph 6.63 of the Guidelines.

12. Accordingly, I consider that Document 2 is conditionally exempt under section 47C of the FOI Act.

Public interest conditional exemptions – deliberative processes

13. Section 11A(5) [access to documents on request] of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

14. Section 11B(3) [public interest exemptions – factors] of the FOI Act sets out factors favouring access to documents, and requires that I consider whether 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.

15. I note that disclosure of the requested information may promote the objects of the FOI Act, as information held by governments is a national resource. This request does not provide you with access to your personal information and, as such, I consider that factor to be irrelevant.

16. I acknowledge that the contamination of the environment and related infrastructure is a matter of public importance, however I consider that release of the conditionally exempt material at this stage would not allow the Minister sufficient time to give the draft interim plan careful consideration, along with further engagement by the government if deemed necessary. I have taken into account the public interest in appropriately maintaining a confidential relationship between ministers and agencies so as to allow agencies and ministers the scope to explore and develop sensitive policy issues.

17. In addition, given the highly emotive issues addressed in the document, release at this time would significantly reduce the quality, clarity or frankness of written advice going to the Minister and this detriment to the public interest outweighs the factors in favour of access. I consider that the premature disclosure of the document would not be conducive to the proper workings of government.

18. Taking all of this into account, I am satisfied that it would be contrary to release Document 2 at this stage and find that the document is exempt under section 47C of the FOI Act.

Payment of Charges

19. On this occasion, I have decided to exercise my delegation and to cap the charges payable to the deposit amount already paid.

20. Accordingly, a copy of the documents in the form approve for release are at Enclosure 1.

FOI Disclosure Log

21. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence will also publish this decision notice with privacy deletions. Your request will be published on 29 February 2016.

Your Review Rights

Internal Review

22. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: FOIReview@defence.gov.au
Fax: 02 626 62112
Post: Freedom of Information Directorate - Reviews
Department of Defence
CP1-6-029
PO Box 7910
CANBERRA BC ACT 2610

Australian Information Commissioner

23. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
Phone: 1300 363 992
Fax: 02 9284 9666
Post: GPO Box 2999
Canberra ACT 2601

Complaints

24. You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoran@defence.gov.au
Post: Tony Corcoran
Assistant Secretary Information Management and Access Branch
CP1-6-14
PO Box 7911
CANBERRA BC ACT 2610

25. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
Fax: 02 6276 0123
Post: Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

26. Contact details for the Information Commissioner are above.

27. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Natalie Carpenter
Acting Director
Information Access

22 February 2016

Enclosure:

1. Documents in form for release