



Australian Government

Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts



FOI reference number:



Via email:  swlrv.org.au

Dear 

Decision made under the *Freedom of Information Act 1982* – Deny access

I refer to your request to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) received on 9 July 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**). You requested the following:

'A copy of the report created following the Review of Australian classification regulation. This report is referred to under the heading 'Timing' on page two of the Terms of Reference.

<https://www.infrastructure.gov.au/sites/default/files/terms-of-reference-review-of-australian-classification-regulation.pdf>

Any recommendations from either the independent expert and/or the Department of Communications and the Arts (now named 'The Department of Infrastructure, Transport, Regional Development and Communications and the Arts') to the Australian Government as part of the Review of Australian classification regulation. The timeframe for this request is 01/04/2020 - 9/07/2022.'

Authority

I am an officer authorised by the Secretary to make decisions about access to documents in the possession of the Department in accordance with subsection 23(1) of the FOI Act.

Documents identified

The Department has undertaken a search of its records and identified one document that falls within the scope of your request.

Decision

I have made a decision to deny access to the documents relevant to your request under section 47E(d) [certain operations of an agency] of the FOI Act.

Material taken into account

In making my decision, I had regard to:

- a. the terms of the request;

- b. the content of the identified document in issue;
- c. relevant provisions in the FOI Act; and
- d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

Section 47E(d) of the FOI Act provides:

(1) A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I am of the view that the document within scope of your request contains information that would disclose the deliberations and internal operations of the Department. The matters being considered within the document include significant legislative changes and the disclosure of this information would have a substantial adverse effect on the operations of the Department, particularly as Government has not been provided with a comprehensive briefing on this report and had a chance to consider it first.

Accordingly, I have decided to deny access to the document. As Section 47E(d) is a conditional exemption, access must be given subject to the public interest test in accordance with subsection 11A(5).

Application of the public interest test:

Subsection 11A(5) provides that an agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document would, on balance, be contrary to the public interest.

In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:

- (a) disclosure would promote the objects of the FOI Act;
- (b) disclosure would inform debate on a matter of public importance;
- (c) disclosure would promote effective oversight of public expenditure; and
- (d) disclosure would allow a person to access his or her personal information.

Whilst disclosure would promote the objects of the Act, I do not consider that disclosure of this information would inform debate on a matter of public importance, nor would it provide effective oversight of public expenditure. Further, the information does not relate to the applicant. These public interest considerations are therefore irrelevant in this circumstance.

As set out in subsection 11B(4) of the FOI Act, 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 in 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 documents was (or is) of high seniority in the agency to which the request for access to the document was made; or
- (d) access to the document could result in confusion or unnecessary debate.

I am satisfied that no irrelevant factor has been considered, as set out in subsection 11B(4) of the FOI Act.

Taking the above into account, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure, and therefore it would be contrary to the public interest to release this information to you.

Your rights of 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 must be made in writing by post to the FOI Officer or email to [REDACTED]@infrastructure.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**the OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the Department handled your request. You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Contacts

If you wish to discuss this matter, please contact the Department's FOI Coordinator on ([REDACTED]) or via email at [REDACTED]@infrastructure.gov.au.

Yours sincerely



A/g Assistant Secretary
Online Safety, Media and Platforms Division

10 August 2022