



FOI reference: 23-046

FOI 23-046 NOTICE OF DECISION UNDER THE FREEDOM OF INFORMATION ACT

I refer to your request to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) received on 6 October 2022 for access to documents under the *Freedom of Information Act 1982* (**the FOI Act**).

You requested the following:

"...A list of all projects approved by the ministerial panel that were not recommended for funding under rounds 4 and 5 of the BBRF"

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.

Decision

I have identified two documents falling in scope of your request.

Section 17(1)(c) of the FOI Act provides that an agency can produce a written document containing the requested information, by the use of a computer or other equipment that is ordinarily available for retrieving or collating stored information. We have been able to produce documents containing the information you requested. I have, therefore, treated your request as if it were a request for access to these documents, in accordance with section 17(1)(c) of the FOI Act.

I have decided to deny access to two documents.

Date	Document Title	Decision	Exemption
16 August 2020	<i>A list of all projects approved by the ministerial panel that were not recommended for funding under round 4 of the BBRF</i>	Refuse in full	s34(2) – cabinet extract
19 October 2021	<i>A list of all projects approved by the ministerial panel that were not recommended for funding under round 5 of the BBRF</i>	Refuse in full	s34(2) – cabinet extract

Material considered

In making my decision, I had regard to:

- the terms of the request;
- the content of the identified documents in issue;
- relevant provisions in the FOI Act; and
- the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reason for Decision

Section 34 (Cabinet)

The Cabinet exemption in section 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. This exemption is not subject to the public interest test.

- (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; and*
 - (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*

The documents are composed of extracts of documents submitted to the Cabinet for its consideration, and they were brought into existence for the dominant purpose of submission for consideration by the Cabinet, falling under subsection 34(2).

Taking the above into consideration, I am satisfied the content contained within the documents subjects to these exemptions is exempt in accordance with subsection 34(2).

Additional Information

Should you have any enquiries concerning this matter, please do not hesitate to contact the FOI Team on FOI@infrastructure.gov.au.

Yours sincerely



Meghan Hibbert
Authorised Decision Maker
Regional Programs Branch
Regional Development, Local Government and Regional Recovery Division

Date: 1/11/22