



Statement of reasons made under the *Freedom of Information Act 1982*

Decision and reason for decision of
 Julian Yates, First Assistant Secretary, Territories.

Applicant: Alan King
Decision date: 16 April 2012
FOI reference number: 11-34
Documents: Documents relating to “undertakings’ under the contract related to the performance of their flight operation.

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Summary

1. I have made a decision to release the documents subject to your request in part.

Authority to make this decision

2. I, Julian Yates, First Assistant Secretary, Territories Division, am an officer authorised by the Secretary of the Department of Regional Australia, Regional Development, Local Government, Arts and Sports to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 28 February 2012 you made a request for access to documents in the possession of the Department of Regional Australia, Regional Development, Local Government, Arts and Sports (the Department). Your request sought access to a:

"all relevant documents related to what 'undertakings' are required under the contract/agreement related to the performance of their flight operations such as number of flights, frequency, aircraft type, cancellation or non-operational notifications- any performance measures and reporting requirement under the contract."

Documents subject to this request

4. The Department has undertaken a search of its records and has identified all documents that fall within the scope of your request, as set out above.
5. The documents subject to your request are:
 - Schedule 4, 5, and 8 of the Contract in relation to Airline Services for the Indian Ocean Territories.

Decision

6. I have made a decision to release the document subject to your request in part.
7. In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by the following deletions to the document:
 - All of schedule 4 and part of schedule 5 has been redacted as it contains commercially valuable information that is exempt under Section 47 (1) (b).

Reasons for decision

8. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those finding were based and the reasons for my decision to grant partial access to documents follow.
9. In making my decision, I had regard to third party consultation provided by Virgin Australia Airlines Pty Ltd. Virgin Australia have demonstrated that information contained in schedule 4 and part of

schedule 5 is commercially valuable information. They further demonstrate that if this information was to be released the commercial value of this information would be destroyed. I have considered therefore S47(1) (b) Commercially valuable information.

A full extract of all provisions I used to make my decision are provided in Schedule 2.

Commercially valuable information

10. Section 47 (1) (b) exempts from release a document that contains information of commercial value. There must be a reasonable likelihood that the value would reasonably be destroyed or diminished through disclosure.
11. It has been demonstrated that information within the documents is essential to the profitability and viability of Virgin Australia's business operations and is of commercial value. It has been further demonstrated that should this information be released it will significantly destroy the value of the information. Thereby causing significant harm to Virgin Australia's business operations.
13. Based on this I am confident that section 47(1) (b) applies to schedule 4 and in part to schedule 5 of the documents requested.

Assessment of actual charges

14. I made a decision not to impose any charges in relation to this request.

Your rights of review

15. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).
16. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:
 - Post:** FOI Coordinator
Department of Regional Australia, Regional Development and Local Government
GPO Box 803
Canberra ACT 2601
 - Fax:** +61 2 6247 1347
 - Email:** FOI@regional.gov.au
17. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking an external review from the

Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 2999

Canberra ACT 2601

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

In person: Level

25 National Circuit

Forrest, ACT; or at

Level 8, Piccadilly Tower

133 Castlereagh Street

Sydney, NSW

More information about Information Commissioner Reviews is available from
[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).



Julian Yates

First Assistant Secretary, Territories Division

16 April 2012



Australian Government

Department of Regional Australia, Local Government, Arts and Sport

FOI
Schedule 1

Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister 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 at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:

- (a) a conditionally exempt document; and
- (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:

- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
- (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and

- (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
 - (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii);including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (1).
 - (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.
(see section 11A).

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - a. Trade secrets; or
 - b. Any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - a. by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - b. by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - c. by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organization where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the commonwealth, Norfolk Island or a State or by a local government authority.

