Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of
David Banham, Chief Operating Officer

Applicant:	
Decision date:	**1 August 2011**
FOI reference number:	**11-16**
Documents:	**The Department's Incoming Government Brief for the re-elected Gillard Government**

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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, David Banham, Chief Operating Officer, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) 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 October 2010 you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:

> *The Incoming Government brief (so called '"red book") prepared by the Department of Infrastructure, Transport, Regional Development and Local Government for the re-elected Gillard Government*

4. On 1 November 2010 the Department provided you with an estimate of a charge in the amount of $1,596.48.

5. On 15 November 2010 you wrote to the Department and contended that charges should be reduced or not imposed. You also requested that the Department take into account the changes to the FOI laws since 1 November 2010 and you advised that you would resubmit your request under the new legislation if the Department did not do so. Accordingly, I wrote to you on 19 November 2010 to advise that the Department had reduced your charges to $1,496.48 (with the reduction of $100.00 being five hours free decision-making time in accordance with the new charging regime under the reformed FOI Act). You were also advised that charges would not be reduced any further or waived in the public interest.

6. On 23 November 2010 you sought an internal review of my decision not to waive or reduce the charges payable in relation to your request. On 7 January 2011 you received a decision on internal review that charges would not be reduced or waived in the public interest, by Mr David Williamson, Executive Director, Policy and Research Division.

7. On 10 March 2011 the Department was notified by the Office of the Australian Information Commissioner (OAIC) that you had sought an Information Commissioner Review of Mr Williamson's internal review decision imposing charges. On 6 May 2011 the OAIC advised that it had decided to review the decision. On 3 June 2011, the Department wrote to the OAIC advising that it would seek to reach an agreement with you to reduce the charges by fifty per cent.

8. On 17 June 2011, the Department wrote to you advising that some briefs had been released under the FOI Act in response to other requests and could be provided at no charge upon request. The Department offered to reduce remaining applicable charges by fifty per cent to $480.12. On 22 June 2011, you accepted the Department's offer to reduce charges and paid in full. On the same day, the Department forwarded your acceptance of its offer to the OAIC. On 24 June 2011 the OAIC accepted the agreement between the Department and yourself; and finalised its review of charges.

Documents subject to this request

9. 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.

10. As advised in paragraph 8 of this decision, the Department has not considered documents that have been released under the FOI Act in response to other requests. These include briefs relating to nation building, infrastructure investment and Infrastructure Australia, and the lead volume of the brief relating to Portfolio responsibilities, structure, legislative work program and other organisational and functional information. As advised on 17 June 2011, the Department can provide these briefs to you upon request at no charge.

11. Briefs concerning Local Government and Regional Development (LGRD) and the Office of Northern Australia (ONA) were originally considered a part of your request, however, due to machinery of government changes, the Department of Regional Australia, Regional Development and Local Government now have responsibility for these briefs.

12. The documents subject to your request are listed in the schedule of documents at Schedule 1.

13. Please note that each of the briefs that fall within the scope of your request contain names and telephone numbers of responsible contact officers. In accordance with general departmental protocol, the Department has removed the name and telephone number of responsible officers.

Decision

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

I have decided to grant access in full to the following documents:

Immediate Priorities – Contents	Contents for the brief: 'Immediate Priorities'
STP IP 01	Australian Transport Council
STP IP 02	Road Safety Issues
STP IP 03	Amendments to Maritime Legislation
STP IP 04	Transport Skills Forum (Timing and Possible Opening Address)
AAA IP 03	Airports Act Decisions – Master Plans, Master Development Plan, Airport Environment Strategy
AAA IP 06	Implementation Strategy for Air Traffic Control at Regional Airports
OTS IP 01	Voluntary Reporting Scheme for Transport Security Events
OTS IP 02	Aviation Security Identification Card (ASIC) enhancements
OTS IP 03	Implementation of Strengthening Aviation Security Package
OTS IP 05	Joint Liquids, Aerosols and Gels (LAGs) trial
OTS IP 06	Accredited Air Cargo Agent Scheme
Election Commitments – Contents	Contents for the brief: 'Election Commitments'
Program Briefs – Contents	Contents for the brief: 'Program Briefs'
OTS PB 01	Aviation Security Enhancements
OTS PB 02	Strengthening Aviation Security
STP PB 01	National Transport Reform
STP PB 02	Interstate Road Transport

STP PB 03	National Transport Commission
STP PB 04	Bass Straight Passenger Vehicle Equalisation Scheme
STP PB 05	International Maritime Organization – contribution
STP PB 06	Oil Pollution Compensation Fund
STP PB 07	Tasmanian Freight Equalisation Scheme
STP PB 08	Tasmanian Wheat Freight Scheme
PAR PB 01	OECD Road Transport – Contribution
STP PB 09	Payments to CAC Act bodies – AMSA
STP PB 10	keys2drive
STP PB 11	National Road Safety Council – contribution
STP PB 12	Seat belt on regional school buses
AAA PB 01	Payment Scheme for Airservices Australia's En route Charges
AAA PB 02	Fort Street High School – noise insulation
AAA PB 03	International Civil Aviation Organization – contribution
AAA PB 04	Implementation of Noise Amelioration for Adelaide Airport
AAA PB 05	Airport Lessee Companies – reimbursement of parking fines
AAA PB 06	Remote Aviation Infrastructure Fund
AAA PB 07	Remote Aerodrome Safety Program
AAA PB 08	Remote Air Services Subsidy Scheme
AAA PB 09	Sydney West Airport – rental properties
AAA PB 10	Payments to CAC Act bodies – CASA
AAA PB 11	Aircraft Noise Levy
AAA PB 12	Aircraft noise penalties
AAA PB 13	Airport Building Controllers
AAA PB 14	Airport Environment Officers
AAA PB 15	Airport Leases – in lieu of land tax
AAA PB 16	Parking Fines – Leased Airports
AAA PB 17	Sydney West Airport – Rental Properties
AAA PB 18	Airservices Australia – dividend
STP PB 13	Motor Vehicle Standards Regulations Fees
STP PB 14	Marine Navigation Levy and Marine Navigation (Regulatory Functions) Levy
STP PB 15	*Navigation Act 1912* – Coastal Trading
STP PB 16	Oil Pollution Compensation Fund
STP PB 17	Part X of the *Trade Practices Act 1974*
STP PB 18	Protection of the Sea Levy
OTS PB 03	Infringements under the *Maritime Transport and Offshore Facilities Security Act 2003*
OTS PB 04	Infringements under the *Aviation Transport Security Act 2004*

In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by deletions of the following documents:

CORP IP 01	Portfolio appointments
STP IP 05	Green Vehicle Guide – Linkage to Cleaner Car Rebate
AAA IP 01	Terms of Reference for Productivity Commission Inquiry into Airport Pricing and Economic Regulation
AAA IP 02	Government Response to Airport Requests for Extension of Tripartite Deeds
AAA IP 04	International Civil Aviation Organisation (ICAO) Assembly Mandate
AAA IP 05	Changes to Guidelines for En Route Charges Rebate Scheme Payments
OTS IP 04	Introduction of Body Scanners at International Airports
OTS IP 07	Trial of Infringement Notice Provisions
STP EC 01	Mandatory CO^2 Emissions Standards for Light Vehicles
STP EC 02	Shipping Reform

AAA EC 01	Avalon Airport
PAR EC 01	High Speed Rail Feasibility and Corridor Study

Reasons for decision

15. 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.

16. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth, and establish the public interest test which applies to conditional exemptions. I also considered the following exemption provisions of the FOI Act relevant to my decision:

Section 33	Documents affecting national security, defence or international relations
Section 34	Cabinet documents
Section 47	Documents disclosing trade secrets or commercially valuable information
Section 47B	Public interest conditional exemptions—Commonwealth-State relations etc.
Section 47C	Public interest conditional exemptions—deliberative processes
Section 47F	Public interest conditional exemptions—personal privacy
Section 47G	Public interest conditional exemptions—business

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

Documents affecting international relations

17. Section 33(a) provides an exemption for documents which, if disclosed, would, or could reasonably be expected to, cause damage to the Commonwealth's security, defence or international relations.

18. Document AAA IP 04 contains information about the Government's position on the International Civil Aviation Organisation (ICAO) Assembly Mandate in respect of Australia's international airports, which if released, could reasonably be expected to cause damage to the Commonwealth's international relations. I have, therefore, decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 33(a).

Cabinet documents

19. Section 34(3) provides that a document is exempt if 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.

20. Documents CORP IP 01, AAA IP 02, STP EC 01, STP EC 02 and PAR EC 01 contain information about Cabinet deliberations and discussions. I have, therefore, decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 34(3).

Documents disclosing commercially valuable information

21. Section 47(b) provides an exemption for information which has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

22. Documents STP IP 01, AAA IP 01, AAA IP 02, AAA IP 03, AAA IP 04 and AAA IP 05 contain information about businesses whose affairs are relevant to the Commonwealth. Document STP IP 01 contains information about the Green Vehicle Guide and its implications for certain vehicle manufacturers. This information is not in the public domain, and its commercial value could reasonably be expected to be destroyed or diminished if it were disclosed. Documents AAA IP 01, AAA IP 02, AAA IP 03, AAA IP 04 and AAA IP 05 contain commercial information about various private airports. Similarly, this information is not in the public domain, and could reasonably be expected to be destroyed or diminished if it were disclosed. I have, therefore, decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 47(b).

Public interest conditional exemptions—Commonwealth-State relations etc.

23. Section 47B(a) provides an exemption for information which, if disclosed, would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

24. Documents AAA IP 01, AAA IP 02, AAA IP 04, AAA IP 05, OTS IP 07 and PAR EC 01 contain information which, if disclosed, could reasonably be expected to cause damage to relations between the Commonwealth and State Governments. Documents AAA IP 01, AAA IP 02, AAA IP 04, AAA IP 05 and OTS IP 07 contain information about airports, which involves ancillary information about state planning and is of a nature, that, if disclosed, could reasonably be expected to cause damage between the Commonwealth and respective State Governments. I have, therefore, decided that the information is conditionally exempt in accordance with Section 47B.

25. After coming to the conclusion that information is conditionally exempt in accordance with Sections 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the part o the document would, on balance, be contrary to the public interest.

Firstly, I considered the following factors favouring access, specifically, that disclosure would:
(a) promote the objects of the Act
(b) inform debate on a matter of public importance
(c) promote effective oversight of public expenditure

I have considered these factors, and agree that the objects of the Act should be promoted. I also envisage that the information will be of some benefit in informing debate on a matter of public importance and promoting effective oversight of public expenditure.

Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
(a) reasonably be expected to damage relations with State and Local Governments
(b) reasonably be expected to prejudice an agency's ability to obtain confidential information
(c) reasonably be expected to prejudice an agency's ability to obtain similar information in the future
(d) reasonably be expected to harm the interests of an individual or group of individuals
(e) reasonably be expected to prejudice the management function of an agency

As discussed above, the information in these documents is of a nature that it is likely to damage relations with State and Local Governments. In addition, it may also cause these Governments to limit or decrease the amount of information they supply to the Commonwealth Government in the future. Moreover, the information may be expected to the harm interests of State and Local Governments in managing their airports and projects. This will, in turn, compromise the Department's ability to manage its functions, specifically those relating to the administration of airports.

Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the exempt material would, on balance, be contrary to the public interest insofar as amicable relations with State and Local Governments and the future supply of information by these Governments outweighs the factors favouring access. Accordingly, I have decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 47B(a).

Public interest conditional exemptions—deliberative processes

26. Section 47C(1) provides an exemption for opinions, advice or recommendations that have been obtained, prepared or recorded, or consultations or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the agency or a minister.

27. Documents CORP IP 01, STP IP 05, AAA IP 01, AAA IP 02, AAA IP 04, AAA IP 05, OTS IP 04, OTS IP 07, STP EC 01, STP EC 02, AAA EC 01, and PAR EC 01 contain opinions, advice or recommendations that have been obtained, prepared or recorded, or consultations or deliberations that have taken place, in the course of, or for the purposes of, a deliberative process of the Department and the Minister for Infrastructure and Transport. I have, therefore, decided that the information is conditionally exempt in accordance with Section 47C.

28. After coming to the conclusion that information is conditionally exempt in accordance with Sections 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the parts of the documents would, on balance, be contrary to the public interest.

    Firstly, I considered the following factors favouring access, specifically, that disclosure would:
    (a) promote the objects of the Act
    (b) inform debate on a matter of public importance
    (c) promote effective oversight of public expenditure

    I have considered these factors, and agree that the objects of the Act should be promoted. I also envisage that the information will be of some benefit in informing debate on a matter of public importance and promoting effective oversight of public expenditure.

    Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
    (a) reasonably be expected impair the confidentiality of Cabinet processes
    (b) reasonably be expected to prejudice an agency's ability to obtain confidential information
    (c) reasonably be expected to prejudice an agency's ability to obtain similar information in the future
    (d) reasonably be expected to harm the interests of an individual or group of individuals
    (e) reasonably be expected to prejudice the management function of an agency
    (f) reasonably be expected to reduce the quality, clarity or frankness of written advice going to Ministers in future
    (g) reasonably be expected to be unconducive to the proper workings of government

    As discussed above, documents CORP IP 01, AAA IP 02, STP EC 01, STP EC 02, and PAR EC 01 contain Cabinet-related material. Additionally, there is material in these documents, as well as STP IP 05, AAA IP 01, AAA IP 02, AAA IP 04, AAA IP 05, OTS IP 04, OTS IP 07, STP EC and AAA EC 01, which though not be strictly Cabinet-related, should be exempt from disclosure in the interests of protecting the confidentiality of Cabinet processes.

    Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the exempt material would, on balance, be contrary to the public interest insofar as preserving the confidentiality of the Cabinet process outweighs the factors favouring access.

Accordingly, I have decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 47C.

Public interest conditional exemptions—personal privacy

29. Section 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person. Section 4(1) of the FOI Act provides that 'personal information' means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

30. Documents CORP IP 01 contains an opinion about a person in respect of a portfolio appointment. This information is sensitive personal information, which is otherwise not publicly available.

31. After coming to the conclusion that information is conditionally exempt in accordance with Sections 47F, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the parts of the documents would, on balance, be contrary to the public interest.

    Firstly, I have considered the following factor favouring disclosure, specifically that disclosure would:
    (a) promote the objects of the Act
    (b) inform debate on a matter of public importance
    (c) promote effective oversight of public expenditure

    I have considered these factors, and agree that the objects of the Act should be promoted. I also envisage that the information will be of some limited benefit in informing debate on a matter of public importance and promoting effective oversight of public expenditure.

    Secondly, I have considered the following factors against disclosure, specifically that disclosure would:
    (a) reasonably be expected to harm the interests of an individual or group of individuals
    (b) found an expectation that the Department deals with personal information in a matter inconsistent with the *Privacy Act 1988*.

    Finally, I have weighed the factors to determine where the public interest lies. I have decided that disclosure of these documents would, on balance, be contrary to the public interest insofar as protection of individuals' personal information is a paramount consideration. Accordingly, I have decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 47F.

Public interest conditional exemptions—business

32. Section 47G(1)(a) provides that a document is conditionally exempt if its disclosure would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

33. Documents STP IP 01, AAA IP 01, AAA IP 02, AAA IP 03, AAA IP 04 and AAA IP 05 contain information about businesses whose affairs are relevant to the Commonwealth. Document STP IP 01 contains information about the Green Vehicle Guide and its implications for certain vehicle manufacturers. This information is not in the public domain, and the disclosure of the information

would, or could reasonably be expected to, unreasonably affect a vehicle manufacturer adversely in respect of their lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs. Documents AAA IP 01, AAA IP 02, AAA IP 03, AAA IP 04 and AAA IP 05 contain commercial information about various private airports. Similarly, this information is not in the public domain, and the disclosure of the information would, or could reasonably be expected to, unreasonably affect various private airports adversely in respect of their lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

34. After coming to the conclusion that information is conditionally exempt in accordance with Sections 47G, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the parts of the documents would, on balance, be contrary to the public interest.

Firstly, I have considered the following factor favouring disclosure, specifically that disclosure would:

(a) promote the objects of the Act
(b) inform debate on a matter of public importance
(c) promote effective oversight of public expenditure

I have considered these factors, and agree that the objects of the Act should be promoted. I also envisage that the information will be of some benefit in informing debate on a matter of public importance and promoting effective oversight of public expenditure.

Secondly, I have considered the following factors against disclosure, specifically that disclosure would:

(a) reasonably be expected to harm the interests of an individual or group of individuals;
(b) reasonably be expected to damage the profitability of a business; and
(c) found an expectation that the Department deals with business information in a matter inconsistent with the standard reasonably expected of the Government in relation to commercially sensitive information.

Finally, I have weighed the factors to determine where the public interest lies. I have decided that disclosure of these parts of documents would, on balance, be contrary to the public interest insofar as causing harm to an individual or business would be detrimental to competition, and therefore, not in the public interest. Accordingly, I have decided to provide access to an edited copy, modified by deletions, of the information which I have found to be subject to Section 47G.

Your rights of review

35. 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).

36. 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 Infrastructure and Transport

GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

37. 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 internal 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.

David Banham
Chief Operating Officer

1 August 2011

Schedule of documents

Applicant:

Decision date: **1 August 2011**

FOI reference number: **11-16**

Documents: **The Department's Incoming Government Brief for the re-elected Gillard Government**

Document reference	Author	Recipient	Document description	Full, partial or nil release
Immediate Priorities - Contents	Department of Infrastructure, Transport, Regional Development and Local Government (Department)	Minister for Infrastructure, Transport, Regional Development and Local Government (Minister)	Contents for the brief: 'Immediate Priorities'	Full release
CORP IP 01	Department	Minister	Portfolio appointments	Partial release - s 34 - s 47C - s 47F
STP IP 01	Department	Minister	Australian Transport Council	Full release
STP IP 02	Department	Minister	Road Safety Issues	Full release
STP IP 03	Department	Minister	Amendments to Maritime Legislation	Full release
STP IP 04	Department	Minister	Transport Skills Forum (Timing and Possible Opening Address)	Full release
STP IP 05	Department	Minister	Green Vehicle Guide – Linkage to Cleaner Car Rebate	Partial release - s 47 - s 47C - s 47G
AAA IP 01	Department	Minister	Terms of Reference for Productivity Commission Inquiry into Airport Pricing and Economic Regulation	Partial release - s 47 - s 47B - s 47C - s 47G
AAA IP 02	Department	Minister	Government Response to Airport Requests for Extension of Tripartite Deeds	Partial release - s 34 - s 47 - s 47B - s 47C - s 47G
AAA IP 03	Department	Minister	Airports Act Decisions – Master Plans, Master Development Plan, Airport Environment Strategy	Full release

AAA IP 04	Department	Minister	International Civil Aviation Organisation (ICAO) Assembly Mandate	Partial release - s 33 - s 47 - s 47B - s 47C - s 47G
AAA IP 05	Department	Minister	Changes to Guidelines for En Route Charges Rebate Scheme Payments	Partial release - s 47 - s 47B - s 47C - s 47G
AAA IP 06	Department	Minister	Implementation Strategy for Air Traffic Control at Regional Airports	Full release
OTS IP 01	Department	Minister	Voluntary Reporting Scheme for Transport Security Events	Full release
OTS IP 02	Department	Minister	Aviation Security Identification Card (ASIC) enhancements	Full release
OTS IP 03	Department	Minister	Implementation of Strengthening Aviation Security Package	Full release
OTS IP 04	Department	Minister	Introduction of Body Scanners at International Airports	Partial release - s 47C
OTS IP 05	Department	Minister	Joint Liquids, Aerosols and Gels (LAGs) trial	Full release
OTS IP 06	Department	Minister	Accredited Air Cargo Agent Scheme	Full release
OTS IP 07	Department	Minister	Trial of Infringement Notice Provisions	Partial release - s 47B - s 47C
PAR EC 01	Department	Minister	High Speed Rail Feasibility and Corridor Study	Partial release - s 34 - s 47B - s 47C
Program Briefs – Contents	Department	Minister	Contents for the brief: 'Program Briefs'	Full release
OTS PB 01	Department	Minister	Aviation Security Enhancements	Full release
OTS PB 02	Department	Minister	Strengthening Aviation Security	Full release
STP PB 01	Department	Minister	National Transport Reform	Full release
STP PB 02	Department	Minister	Interstate Road Transport	Full release
STP PB 03	Department	Minister	National Transport Commission	Full release
STP PB 04	Department	Minister	Bass Straight Passenger Vehicle Equalisation Scheme	Full release
STP PB 05	Department	Minister	International Maritime Organization – contribution	Full release
STP PB 06	Department	Minister	Oil Pollution Compensation Fund	Full release
STP PB 07	Department	Minister	Tasmanian Freight Equalisation Scheme	Full release
STP PB 08	Department	Minister	Tasmanian Wheat Freight Scheme	Full release
PAR PB 01	Department	Minister	OECD Road Transport – Contribution	Full release
STP PB 09	Department	Minister	Payments to CAC Act bodies – AMSA	Full release
STP PB 10	Department	Minister	keys2drive	Full release
STP PB 11	Department	Minister	National Road Safety Council – contribution	Full release
STP PB 12	Department	Minister	Seat belt on regional school buses	Full release
AAA PB 01	Department	Minister	Payment Scheme for Airservices Australia's En route Charges	Full release
AAA PB 02	Department	Minister	Fort Street High School – noise insulation	Full release
AAA PB 03	Department	Minister	International Civil Aviation Organization – contribution	Full release
AAA PB 04	Department	Minister	Implementation of Noise Amelioration for Adelaide Airport	Full release

AAA PB 05	Department	Minister	Airport Lessee Companies – reimbursement of parking fines	Full release
AAA PB 06	Department	Minister	Remote Aviation Infrastructure Fund	Full release
AAA PB 07	Department	Minister	Remote Aerodrome Safety Program	Full release
AAA PB 08	Department	Minister	Remote Air Services Subsidy Scheme	Full release
AAA PB 09	Department	Minister	Sydney West Airport – rental properties	Full release
AAA PB 10	Department	Minister	Payments to CAC Act bodies – CASA	Full release
AAA PB 11	Department	Minister	Aircraft Noise Levy	Full release
AAA PB 12	Department	Minister	Aircraft noise penalties	Full release
AAA PB 13	Department	Minister	Airport Building Controllers	Full release
AAA PB 14	Department	Minister	Airport Environment Officers	Full release
AAA PB 15	Department	Minister	Airport Leases – in lieu of land tax	Full release
AAA PB 16	Department	Minister	Parking Fines – Leased Airports	Full release
AAA PB 17	Department	Minister	Sydney West Airport – Rental Properties	Full release
AAA PB 18	Department	Minister	Airservices Australia – dividend	Full release
STP PB 13	Department	Minister	Motor Vehicle Standards Regulations Fees	Full release
STP PB 14	Department	Minister	Marine Navigation Levy and Marine Navigation (Regulatory Functions) Levy	Full release
STP PB 15	Department	Minister	*Navigation Act 1912* – Coastal Trading	Full release
STP PB 16	Department	Minister	Oil Pollution Compensation Fund	Full release
STP PB 17	Department	Minister	Part X of the *Trade Practices Act 1974*	Full release
STP PB 18	Department	Minister	Protection of the Sea Levy	Full release
STP PB 19	Department	Minister	Interstate Road Transport – Registration and Fees	Full release
OTS PB 03	Department	Minister	Infringements under the *Maritime Transport and Offshore Facilities Security Act 2003*	Full release
OTS PB 04	Department	Minister	Infringements under the *Aviation Transport Security Act 2004*	Full release

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

(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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;

(aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

(d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

15 Requests for access

Persons may request access

(1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

(2) The request must:

(a) be in writing; and

(aa) state that the request is an application for the purposes of this Act; and

(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and

(c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).

(2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:

(a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;

(b) postage by pre-paid post to an address mentioned in paragraph (a);

(c) sending by electronic communication to an electronic address specified by the agency or Minister.

Agency required to assist

(3) Where a person:

(a) wishes to make a request to an agency; or

(b) has made to an agency a request that does not comply with this section;

it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section.

Note: An agency or Minister may refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking the request consultation process (see section 24).

(4) Where a person has directed to an agency a request that should have been directed to another agency or to a Minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or Minister.

Timeframes for dealing with request

(5) On receiving a request, the agency or Minister must:

(a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and

(b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or Minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).

(5A) In making a decision on a request, the agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of section 93A.

Extension of processing period to comply with requirements of section 26A, 26AA, 27 or 27A

(6) Where, in relation to a request, the agency or Minister determines in writing that the requirements of section 26A, 26AA, 27 or 27A make it appropriate to extend the period referred to in paragraph (5)(b):

(a) the period is extended by a further period of 30 days; and

(b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been so extended.

Extension of processing period to consult foreign entity

(7) Subsection (8) applies if, in relation to a request, the agency or Minister determines in writing that it is appropriate to extend the period referred to in paragraph (5)(b) so that the agency or Minister can:

(a) consult one of the following:

(i) a foreign government;

(ii) an authority of a foreign government;

(iii) an international organisation; and

(b) determine whether the document that is the subject of the request is an exempt document under subparagraph 33(a)(iii) or paragraph 33(b).

(8) If this subsection applies:

(a) the period referred to in paragraph (5)(b) is extended by a period of 30 days; and

(b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.

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).

33 Documents affecting national security, defence or international relations

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

(i) the security of the Commonwealth;

(ii) the defence of the Commonwealth; or

(iii) the international relations of the Commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Note: See also subsection 4(10).

34 Cabinet documents

General rules

(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;

(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.

Exceptions

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

(a) the disclosure of the information would reveal a Cabinet deliberation or decision; and

(b) the existence of the deliberation or decision has not been officially disclosed.

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 organisation 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.

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

(d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

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

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47F Public interest conditional exemptions—personal privacy

General rule

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
   (a) the extent to which the information is well known;
   (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
   (c) the availability of the information from publicly accessible sources;
   (d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

(4) Subsection (5) applies if:
   (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
   (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
   (a) carries on the same occupation, of a kind mentioned in the definition of ***qualified person*** in subsection (7), as the first-mentioned qualified person; and
   (b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:
   (a) a medical practitioner;
   (b) a psychiatrist;
   (c) a psychologist;
   (d) a counsellor;
   (e) a social worker.

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

47G Public interest conditional exemptions—business

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) 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 organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) 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.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

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

Australian Government

Department of Infrastructure and Transport

FOI tracking number: FOI 11-16

Dear

INTERNAL REVIEW OF A DECISION TO IMPOSE PROCESSING CHARGES IN ACCORDANCE WITH THE *FREEDOM OF INFORMATION ACT 1982*

Thank you for your letter received 23 December 2010 seeking an internal review of a decision to impose processing charges on your FOI request. Your request is seeking access to documents in the possession of the Department of Infrastructure and Transport in accordance with the *Freedom of Information Act 1982* (the FOI Act).

Your letter seeks an internal review of Mr David Banham's decision of 19 November 2010 not to waive or reduce the processing charges for your FOI request.

Background

On 28 October 2010, the Department received your request seeking documents in accordance with the FOI Act.

Your request sought access to:

- 'the Incoming Government brief (so called "red book") prepared by the Department of Infrastructure, Transport, Regional Development and Local Government for the re-elected Gillard Government'.

Authority

As an authorised officer under Section 23 of the Act I have been asked to conduct the review. In doing so I have been mindful of the requirements under Part VI of the Act relating to the conduct of internal reviews, including under Section 54C(3) that this be a 'fresh decision'.

Internal Review

In coming to a decision in relation to your application I have had regard for Section 29 of the Act, which relates to the imposition of charges and—at Section 29(5)—describes factors in determining whether to reduce or waive charges:

GPO Box 594 Canberra ACT 2601 Australia • Telephone: 02 6274 7111 • Facsimile: 02 6275 1347
Website: www.infrastructure.gov.au • ABN 86 267 354 017

(5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:

(a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and

(b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

On the specifics of this internal review I have also considered:

- the original decision that you were liable to pay a charge for the processing of the request (1 November 2010);
- Your letter seeking waiver or reduction of this charge (received 15 November 2010);
- the decision to deny waiving or significantly reducing the processing charges of your request (19 November 2010); and
- Your letter seeking an internal review of this decision (received 23 December 2010).

Furthermore, I have been mindful of the stated objects of the Act (Part 3), particularly:

(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;

and:

(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.

I have also been cognisant of recent changes to the FOI charging regime, including removal of application fees and charges for the first five hours decision-making time. Equally, I have recognised the fact that the Act continues to reflect a policy in relation to FOI requests that, prima facie, charges should be imposed as appropriate and applicants required to meet the requisite costs. I have also confirmed that there are no specific provisions for waiving or reducing costs to journalists.

Finally, I have had regard for other guidance and material on the Act and related issues, including that produced by the Office of the Australian Information Commissioner, Department of the Prime Minister and Cabinet and the Attorney-General's Department.

Internal Review Decision

I have decided on balance to affirm the decision of 19 November 2010 to impose processing charges of $1,496.48 for your FOI request.

In doing so, I note that this amount is a reduction of the original quoted figure, based on application of the new charging system under the Act. I also note that, consistent with the new charging system, you were not asked to provide a fee for this internal review.

Reasons for Decision

I note that you have not sought waiver or reduction of fees on the grounds that the fees were wrongly calculated. Nevertheless I have reviewed the accuracy of the assessment of charges as provided to you on 1 November 2010 and 19 November 2010 and confirmed that these are accurate and consistent with the formulas set out in the *Freedom of Information (Charges) Regulations*.

I also note that you have not sought waiver or reduction of fees on the grounds of financial hardship. However, you have pointed out that as a publically funded service organisation the seeks to minimise the cost to taxpayers of FOI requests. While not disputing this I do not consider it a relevant factor, as the Act does not require consideration of whether it is in the public interest to waive or reduce the charges. I do, however, consider it relevant to this review that you have not suggested that paying the charges would cause financial hardship to the organisation or that you would not proceed with the request if the charges were not waived or significantly reduced.

As you have emphasised in correspondence and as required under the Act, I have considered matters relating to the general public interest—noting that this review is not about actual access to the documents that have been requested, which I have not considered and would be a separate matter for the decision maker in due course.

In particular I have considered two main issues in relation to the general public interest:

- whether the benefit from the release of the information contained in the particular document would flow to the public at large (or a substantial section of the public), and
- whether making the specific information in the particular documents more widely available would be in the public interest (ie of benefit to the public).

On the first issue, to determine whether any benefit would flow from the release of the information in question it is necessary to consider whether the information itself would flow to the public. Recognising the request is from a media organisation, I accept that if some or all of the material was made public, it would reach at least a substantial section of the public, given the reach across media platforms. However, I do not accept the assertion that—by virtue of the charter being to inform the Australian community—there is a 'very high likelihood' that the content of the documents would be made publicly known. The material in question comprises over 500 pages and while there is clearly a possibility that it would subsequently be made public, the likelihood that all or even most would be made public is not readily apparent. As such, I have concluded that it is only possible, but not probable or likely, that the material would flow to the public at large, or a substantial section of the public.

On the second issue, I accept the potential for a benefit to the public to be derived from release of the documents in question, given their subject matter and the nature of the material in question. However, the extent of any benefit would be mitigated by several factors, including the currency of the documents (a number now being out of date and/or superseded

by events) and the context in which they were prepared (with a particular readership in mind and a particular understanding of the issues, background and history). While these factors do not remove the possibility of the public benefitting from release, they are relevant to my broader consideration of this internal review on charges.

Having reached the above views in relation to fee calculations and financial hardship, and established the possibility that the information in the documents would flow to the public at large, as well as the potential though qualified benefit to the public from release of these documents, I have considered whether there are any other considerations of relevance to this review. In this regard, I have concluded that, as a major news organisation pursuing this FOI request in the normal course of its business, the applicant could reasonably be expected to derive some direct benefit from disclosure of the documents in question. I acknowledge that, given the media organisation in question is the , this benefit may not necessarily be a strictly or purely commercial one, however the reputational and related benefits are real and relevant. As such, this represents a countervailing consideration, along with those I have outlined above, and does not support waiving or significantly reducing the charges.

In light of all these considerations and with regard to the material I have examined, I am not satisfied that the public interest claims outweigh the arguments against waiving or significantly reducing the charges.

What to do now

Within 30 days of receipt of this notice, you need to either:

1. agree to pay the charge of $1,496.78 and send the necessary payment; or
2. apply for an Information Commissioner review of this decision (please see fact sheet enclosed detailing further information).

As outlined in the letter dated 19 November 2010, Section 31 of the FOI Act, the time limit for processing your request continues to be suspended from the day that you received the notice. It will resume on either the day you pay the charge (in full or the required deposit of $374.12) or the day the Department makes a decision not to impose a charge.

If payment is not received within 30 days, your FOI request with the Department of Infrastructure and Transport will be considered withdrawn.

the Department's Freedom of Information Coordinator, can be contacted on telephone or e-mail *FOI@infrastructure.gov.au* for any assistance with your Freedom of Information request.

Yours sincerely

David Williamson

Executive Director
Policy and Research
21 January 2011

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of Andrew Jaggers, Executive Director, Nation Building – Infrastructure Investment

Applicant:	
Decision date:	**2 September 2011**
FOI reference number:	**11-68**
Documents:	**Documents relating to the construction of the Epping to Parramatta rail link**

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Summary

1. I refer to your letter dated the 18 May 2011 in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to various documents concerning the construction of an Epping to Parramatta rail link.

Authority to make this decision

2. I, Andrew Jaggers, Executive Director, Nation Building – Infrastructure Investment, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the FOI Act.

Decision

3. I have identified 19 documents in the possession of the Department that fall within scope of your FOI request.

   I have decided to release 5 documents in full.

   I have decided to release 8 documents with some parts deleted pursuant to Section 22 of the FOI Act. I am satisfied that the documents contain material which is either irrelevant to your FOI request, or contain material which is exempt under Sections 47B, 47C and 47F.

   I have decided to refuse access to 6 documents in full. I am satisfied that these documents are exempt documents under Sections 47B and 47C.

Background

4. On 18 May 2011 you made a request for access to documents in the possession of the Department. Your request sought access to:

   "all documents the Department possess including, but not limited to emails, faxes, reports, submissions and other correspondence sent to and received from:
   - *The Federal Minister for Infrastructure and Transport, and his ministerial and personal staff,*
   - *The (former)NSW Premier, her ministerial and personal staff, and the NSW Ministers for Planning and Transport and their ministerial and personal staff,*
   - *NSW Government agencies, including the Department of Premier and Cabinet, Planning and Transport NSW,*
   - *Infrastructure Australia;*

   during 2010 relating to the construction of an Epping to Parramatta rail link."

5. On 10 June 2011 the Department provided you with an estimate of a charge in the amount of $962.77.

6. On 22 July 2011 the Department decided to waive charges after an internal review of charges was conducted.

Documents subject to this request

7. 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.

8. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Reasons for decision

9. 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 findings were based and the reasons for my decision to grant partial access to documents follow.

10. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Commonwealth Government. I also considered the following provisions of the FOI Act relevant to my decision:
    - Documents affecting Commonwealth-State Relations (Section 47B)
    - Deliberative process documents (Section 47C)
    - Documents containing personal information (Section 47F)

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

Documents affecting Commonwealth-State relations

Documents 4 and 7

11. I have exempted part of document 4 (Letter from NSW Government Transport dated 26 October 2010) and part of document 7 (Brief dated 14 August 2010).

12. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:
    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or
    - would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

    For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

13. I have exempted paragraphs 3, 4, 5 and 6 of document 4 and the first two pages of background information in document 7.

14. The exempted information in these documents reveals opinions about the respective role of the Commonwealth and the State in investing in infrastructure in New South Wales (NSW). It discusses opinions on investments and there is a likely expectation that damage between

the Commonwealth and States could result from release of information. Specifically, I believe that disclosure of this material may:

- impair or prejudice the future flow of information; and
- adversely affect the development of future Commonwealth-State projects.

15. After coming to the conclusion that the paragraphs are conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the part of the document would, on balance, be contrary to the public interest.

16. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the FOI Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

17. I have considered these factors, and agree that the objects of the FOI Act should be promoted. I also envisage that release of the information may have some benefit in informing debate on a matter of public importance and promoting the effective oversight of public expenditure. However, this benefit will be limited as it is an opinion of planning regimes around rail links and adds very little additional factual information, or information about policy decision-making to that already in the public domain.

18. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to have a negative impact on Commonwealth-State relations;
(b) reasonably be expected to harm the interests of an individual or group of individuals;
(c) reasonably be expected to prejudice the management function of an agency;
(d) impair or prejudice the future flow of information to the Commonwealth; and
(e) adversely affect negotiations between the Commonwealth and the States.

As discussed, release of the information may have a detrimental effect on Commonwealth-State relations, and will, therefore prejudice the Department's ability to undertake its functions effectively.

19. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the part of the document would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and States is an essential requirement in the investing in infrastructure in NSW. Secondly, I am satisfied that any harm to individuals by the release of information under FOI is a strong consideration which I am bound to consider. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

20. Apart from these paragraphs, the remainder of the documents are to be released.

Document 14

21. I have exempted document 14 (Email chain titled Draft Epping MOU between Cth and NSW dated 22, 27 and 28 September 2010) in its entirety.

22. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:
    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or
    - would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

    For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

23. Document 14 is an email chain which discusses various options and opinions identifying issues on which to brief the Minister for Infrastructure and Transport and NSW Government. The document contains unofficial and unfinalised positions regarding the relationship between the Commonwealth and the State on various proposed approaches to investment in infrastructure projects. This paper contains input from the State Government. There is a likely expectation that damage between the Commonwealth and State could result from the premature release of this information. Specifically, I believe that disclosure of this material may:
    - impair or prejudice the future flow of information to the Commonwealth; and
    - adversely affect negotiations between the Commonwealth and the States.

24. After coming to the conclusion that the document is conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the part of the document would, on balance, be contrary to the public interest.

25. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

    (a) promote the objects of the FOI Act;
    (b) inform debate on a matter of public importance; and
    (c) promote effective oversight of public expenditure.

26. I have considered these factors, and agree that the objects of the FOI Act should be promoted. However, I am not satisfied that release of document 14 will inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. The email chain represents a set of comments on draft documents that was not finalised by the Department or the Minister at that time. The changes noted in this email chain would divulge information that was communicated in confidence and jeopardise future negotiations between the Commonwealth and the NSW Government.

27. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to have a negative impact on Commonwealth-State relations;
(b) reasonably be expected to harm the interests of an individual or group of individuals; and
(c) reasonably be expected to prejudice the management function of an agency.

As discussed, the release of the document may have a detrimental effect on Commonwealth-State relations, and will, therefore prejudice the Department's ability to undertake its functions effectively.

28. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the document would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and the States is an essential requirement in the effective management of infrastructure projects. Secondly, I am satisfied that the potential harm to ongoing Commonwealth negotiations by the release of this information under FOI is a strong consideration which I am bound to consider. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

Deliberative process documents

Documents 6 and 13

29. I have exempted part of document 6 (Email and draft Intergovernmental Agreement dated 22 September 2010) and part of document 13 (Letter and draft Intergovernmental Agreement dated 16 December 2010).

30. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which has been redacted or exempt in these documents involves communications which are considered deliberative processes relevant to the functions of the Department. The redacted material and exempt documents do not include operational information nor purely factual information. The documents contain deliberative matter, insofar as they contain opinions, advice or recommendations that communicate unofficial and unfinalised positions regarding various proposed approaches to investment in infrastructure projects. (Section 47C(2)).

31. Document 6 is an email with a draft Intergovernmental Agreement discussing various opinions for the Epping to Parramatta Rail Link. Therefore, it constitutes matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

32. Document 13 is a letter with a draft Intergovernmental Agreement discussing various opinions for the Epping to Parramatta Rail Link. Therefore, it constitutes matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

33. After coming to the conclusion that documents 6 and 13 are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the document would, on balance, be contrary to the public interest.

34. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the FOI Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that release of the attached Intergovernmental Agreements to documents 6 and 13 will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. Documents 6 and 13 have attached draft documents that were prepared for the deliberative purposes of the Department, insofar as they contain opinions, advice or recommendations that were not finalised within the Department at that time. The documents are not representative of the final agreement reached between the Commonwealth and the NSW Government. Therefore, the opinions contained within the documents may not provide any sound bases for public debate, additional to that which is already publicly available.

35. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to prejudice the management function of an agency; and
(b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

I am satisfied that the disclosure of these deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government agreement. The deliberations contained within document 6 and 13 had not been finalised and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the deliberative processes undertaken by the Department and its external stakeholders.

The deliberative material disclosed in documents 6 and 13 may, by implication, result in the flow of information to the Commonwealth being impeded. As internal draft documents, they may be misconstrued and cause doubt about the Government's ability to manage its functions. There is an expectation that stakeholders might cease or limit the supply of information to the Commonwealth based on this doubt.

36. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to documents 6 and 13 would, on balance, be contrary to the public interest insofar as the provision of information to the Commonwealth is a vital component to the successful operation of the Department's functions, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Documents 10, 11, 12, 15 and 16

37. I have exempted documents 10, 11, 12, 15 and 16 in their entirety. These documents all relate to email and drafts, in various stages of development, of the Intergovernmental Agreement to the proposed Parramatta to Epping Rail Link. The documents contain deliberative matter in the nature of advice that was obtained, prepared or recorded, or consultation or deliberation which has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department or the Commonwealth Government.

38. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon the an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which has been redacted or exempt in these documents involves communications which are considered deliberative processes relevant to the functions of the Department. The redacted material and exempt documents do not include operational information nor purely factual information (Section 47C(2)).

39. Having found that the above documents contain material that is deliberative in nature, I must consider whether the disclosure of the emails in question would be contrary to the public interest. This requires that I determine whether the balance of the public interest lies in favour of disclosure or non-disclosure of the contents of the emails.

40. The documents do not reflect the final views or decisions of the Department or the Commonwealth Government in relation to policy and program matters. They are communications which occurred in the course of the formulation and consideration of proposals. Public focus would be turned towards the details of informal deliberative discussions rather than the substantive issues themselves.

41. I am of the view that the factors discussed above outweigh the public interest factors in favour of disclosure, on the basis that:

- it would not make a valuable contribution to public debate to release documents concerned with matters that were not settled, or proposals or recommendations that were not ultimately adopted or implemented;
- the comments in these documents in isolation do not accurately reflect what changes were made and the reason for those changes, disclosure is likely to jeopardise frankness and candour in future deliberative communications between government officials, which may impact on the quality of advice for Ministers and other senior government officials, and lead to misinformation; and
- this could cause damage to the Commonwealth's relationship with the State of NSW through a reduction in trust and confidence, and impair future working relations regarding investment in infrastructure projects, which would be contrary to the public interest.

Having regard to these factors, I am satisfied that, on balance, it would be contrary to the public interest to disclose the above documents.

Documents containing personal information

Documents 1, 2 and 3

42. I have exempted part of documents 1, 2 and 3.

43. Section 47F(1) relevantly provides that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

44. Documents 1, 2 and 3 contain personal information, being the names, addresses (residential and email) and other contact details of individuals. I consider that the release of this information would be an unreasonable disclosure of personal information as the relevant individuals are not public figures.

    Disclosure of the information is likely to expose the individuals to public scrutiny, and could deter the relevant individuals and other persons from providing information or raise issues with the Commonwealth Government in the future. There is also a risk that if disclosed, personal contact details could be subject to misuse or other dealings contrary to the wishes of the individuals.

45. Finally I have weighed the factors to determine where the public interest lies. I have decided that access to the personal information in documents 1, 2 and 3 contains information which is exempt under section 47F(1). I am satisfied that the factors against disclosure outweigh those in favour of access.

Deletion of exempt or irrelevant material from documents

Document 19

46. I have exempted part of document 19 which is a community cabinet brief under Section 22.

47. Section 22 relevantly provides that if an agency decides that granting access to a document would disclose information that would be exempt or reasonably be regarded as irrelevant to the request, then, where it is reasonably practicable to provide a copy with deletions, such a copy should be provided.

    I have decided to apply Section 22 of the FOI Act to delete irrelevant material in respect of the above document, in order to facilitate the release of the remainder of those documents, as set out in Schedule 1.

Your rights of review

48. 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).

49. 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 Infrastructure and Transport
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

50. 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 review by the Information Commissioner.

51. 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.

52. 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 3
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.

Contacts

If you wish to discuss this decision, please contact

Yours sincerely,

NIALL BOYD
FOR ANDREW JAGGERS
EXECUTIVE DIRECTOR, NB-II

Andrew Jaggers
Executive Director, Nation Building – Infrastructure Investment

30 August 2011

Australian Government

Department of Infrastructure and Transport

FOI
Schedule 1

Schedule of documents

Applicant:

Decision date: **2 September 2011**

FOI reference number: **11-68**

Documents: **Documents relating to the construction of the Epping to Parramatta rail link**

Document reference (FOI 11-68 reference)	Date of document	Author	Recipient	Document description	Decision	Exemption Provision
1	28.09.10	Member of public	Dept. Infrastructure	Letter regarding the building of PERL	Release with deletions	s.47F
2	24.11.10	Member of public	Dept. Infrastructure	Letter regarding the building of PERL	Release with deletions	s.47F
3	10.09.10	Member of public	Dept. Infrastructure	Letter regarding the building of PERL	Release with deletions	s.47F
4	26.10.10	NSW Government Transport	Dept. Infrastructure	Letter	Release with deletions	s.47B
5	July 2010	NSW Government Transport	Dept. Infrastructure	NSW Government Submission to Infrastructure	Release in full	
6	22.09.10	Dept. Infrastructure	NSW Government Transport	Email	Release with deletions	s.47C
7	14.08.10	NSW Government Transport	Dept. Infrastructure	Briefing	Release with deletions	s.47B
8	24.09.10	Dept. Infrastructure	Dept. Infrastructure	Email	Release in full	
9	17.09.10	Dept. Infrastructure	NSW Government Premier's Department	Letter and submission	Release in full	
10	14.10.10	Dept. Infrastructure	Dept. Infrastructure	Emails	Exempt in full	s.47C
11	26.11.10	Dept. Infrastructure	Dept. Infrastructure	Email	Exempt in full	s.47C

Document reference (FOI 11-68 reference)	Date of document	Author	Recipient	Document description	Decision	Exemption Provision
12	7.12.10	NSW Government Transport	Dept. Infrastructure	Email	Exempt in full	s.47C
13	16.12.10	Dept. Infrastructure	NSW Government	Letter	Release with deletions	s.47C
14	27.09.10	NSW Government Transport	Dept. Infrastructure	Email chain	Exempt in full	s.47B
15	20.10.10	Dept. Infrastructure	NSW Government Premier's Department	Letter and brief	Exempt in full	s.47C
16	16.09.10	Dept. Infrastructure	Dept. Infrastructure	Email	Exempt in full	s.47C
17	17.09.10	Dept. Infrastructure	NSW Government Premier's Department	Letter	Release in full	
18	12.10.10	Dept. Infrastructure	Public	Australian Government's position on PERL	Release in full	
19	23.09.10	Dept. Infrastructure	Public	Community cabinet brief	Release with deletions	s.22 (Irrelevant material)

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
   (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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;
   (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
   (b) access to the document could result in any person misinterpreting or misunderstanding the document;
   (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
   (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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).

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

(d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

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

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that

has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47F Public interest conditional exemptions—personal privacy

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

(4) Subsection (5) applies if:

(a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist;

(d) a counsellor;

(e) a social worker.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of
John Doherty, Executive Director, Aviation and Airports

Applicant:

Decision date: 9 **August 2011**

FOI reference number: **11-73**

Documents: **Documents relating to aircraft noise**

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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, John Doherty, Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) 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 24 June 2011 you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:

   i) airport safeguarding initiative document dated 29 April 2010 (Document 52);
   ii) alternative noise metrics proposal paper by Scott Stone dated 20 October 2010 (Document 66);
   iii) Scott Stone's minute to Mike Mrdak re inaugural meeting of NASAG dated 3 May 2010 (Document 74); and
   iv) Department of Infrastructure and Planning document entitled 'Principles for a national land use planning regime near airports and flight paths (Document 77).

4. On 12 July 2011 the Department provided you with an estimate of a charge in the amount of $12.00.

5. On 28 July 2011 you agreed to pay the charge, and paid the full amount, being $12.00.

Documents subject to this request

6. 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.

7. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Decision

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

   I have decided to grant access in full to the following document:
   - document 2 in the schedule of documents (alternative noise metrics proposal paper by Scott Stone dated 20 October2010)

   In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by deletions, of the following documents:
   - document 1 in the schedule of documents (airport safeguarding initiative document dated 29 April 2010)
   - document 3 in the schedule of documents (Scott Stone's minute to Mike Mrdak re: Inaugral meeting of NASAG dated 3 May 2010)

I have decided to refuse access to the following document:

- document 4 in the schedule of documents (Principles for a national land use planning regime near airports and flight paths)

Reasons for decision

9. 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.

10. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
    - Documents affecting Commonwealth-State Relations (Section 47B)
    - Deliberative process documents (Section 47C)

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

Deliberative process documents

Document 4

11. I have exempted document 4 'Principles of a national land use planning regime near airports and flight paths – paper' in its entirety.

12. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon the an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which has been redacted or exempt in these documents involves communications which are considered deliberative processes relevant to the functions of the Department, namely civil aviation and airports. The redacted material and exempt documents do not include operational information nor purely factual information (Section 47C(2)).

13. Document 4 is a draft paper discussing various opinions on national land use planning. Therefore, it constitutes matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

14. After coming to the conclusion that the document is conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the document would, on balance, be contrary to the public interest.

15. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

    (a) promote the objects of the Act;
    (b) inform debate on a matter of public importance; and
    (c) promote effective oversight of public expenditure.

    Whilst I have considered these factors, and agree that the objects of the Act should be promoted, I am not satisfied that release of document 4 will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. It is a draft

document which has not been approved by the Government, nor has the Government reached a final policy position on the issues. Therefore, the opinions contained within the document may not provide any sound bases for public debate, additional to that which is already publicly available.

16. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

    (a) reasonably be expected to prejudice the management function of an agency; and
    (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

    I am satisfied that the disclosure of these deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government advisory group, namely NASAG. The deliberations contained within document 4 have not been finalised and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the deliberative processes undertaken by the Department and its external stakeholders.

    The deliberative material disclosed in document 4 may, by implication, result in the flow of information to the Commonwealth being impeded. It is an internal draft document and if misconstrued may, inadvertently, cause doubt about the Government's ability to manage its functions. There is a real possibility that stakeholders might cease or limit the supply of information to the Commonwealth based on this doubt. This may, in turn, compromise the administration of national land use planning regime near airports and flight paths.

17. Finally I have weighed the factors to determine where the public interest lies. I have decided that access to document 4 would, on balance, be contrary to the public interest insofar as the provision of information to the Commonwealth is a vital component to the successful operation of the Department's functions, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Documents affecting Commonwealth-State relations

Documents 1 and 3

18. I have exempted part of document 1 (airport safeguarding initiative document dated 29 April 2010) and part of document 3 (Scott Stone's minute to Mike Mrdak re: Inaugural meeting of NASAG dated 3 May 2010).

19. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:
    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or
    - would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

    For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

20. I have exempted the last paragraph on the only page of document 1 and the last paragraph on page 2 of document 3. These paragraphs are identical and have been exempted on the same basis.

21. The duplicate paragraph in these documents reveals an opinion about the respective role of the Commonwealth and the States and Territories in land use planning around airports. It discusses the appropriateness of past developments and there is a likely expectation that damage between the

Commonwealth and States could result from release of information. Specifically, I believe that disclosure of this material may:

- impair or prejudice the future flow of information; and
- adversely affect the development of future Commonwealth-State projects.

22. After coming to the conclusion that the sentence is conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the part of the document would, on balance, be contrary to the public interest.

23. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

    (a) promote the objects of the Act;
    (b) inform debate on a matter of public importance; and
    (c) promote effective oversight of public expenditure.

24. I have considered these factors, and agree that the objects of the Act should be promoted. I also envisage that release of the paragraph will have some benefit in informing debate on a matter of public importance and promoting the effective oversight of public expenditure. However, this benefit will be limited as it is an opinion of national land use planning regime around airports and adds very little to information already in the public domain due to the release of the National Aviation White Paper.

25. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

    (a) reasonably be expected to have a negative impact on Commonwealth-State relations;
    (b) reasonably be expected to harm the interests of an individual or group of individuals; and
    (c) reasonably be expected to prejudice the management function of an agency.

    As discussed, release of the paragraph may have a detrimental effect on Commonwealth-State relations, and will, therefore prejudice the Department's ability to undertake its functions effectively.

    Furthermore, the paragraph may also, by implication, result in the interests of a group of individuals being prejudiced. Without revealing the third party who's interests may be detrimentally affected, I am satisfied that the opinion may be construed against that group and it is reasonably contended that harm could follow.

26. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the part of the document would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and States is an essential requirement in the effective regulation of Australian Airports. Secondly, I am satisfied that any harm to individuals by the release of information under FOI is a strong consideration which I am bound to consider. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

27. Apart from these paragraphs, the remainder of the documents are to be released.

Document 4

28. I have exempted document 4 'Principles of a national land use planning regime near airports and flight paths – paper' in its entirety.

29. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:

    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or

- would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

30. Document 4 is a draft document which discusses various options and opinions regarding national land use planning near airports and flight paths. As discussed the opinions and options contained within this paper have not be finalised and agreement is yet to be reached. There is a likely expectation that damage between the Commonwealth and State and Territory governments which comprise the National Airports Safeguarding Advisory Group could result from the premature release of this information. Specifically, I believe that disclosure of this material may:
- impair or prejudice the future flow of information to the Commonwealth and State and Territory members of NASAG; and
- adversely affect negotiations between the Commonwealth and the States.

31. After coming to the conclusion that the document is conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the part of the document would, on balance, be contrary to the public interest.

32. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

33. I have considered these factors, and agree that the objects of the Act should be promoted. However, I am not satisfied that release of document 4 will inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. It is a draft document which has not been approved by Commonwealth, State or Territory governments and governments have not reached a final policy position on the issues. Therefore, the opinions contained within the document may not provide any sound bases for public debate, additional to that which is already publicly available.

34. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to have a negative impact on Commonwealth-State relations;
(b) reasonably be expected to harm the interests of an individual or group of individuals; and
(c) reasonably be expected to prejudice the management function of an agency.

As discussed, the release of the document may have a detrimental effect on Commonwealth-State relations, and will prejudice the Department's ability to undertake its functions effectively.

35. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the document would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and the States is an essential requirement in the effective regulation of Australian Airports. Secondly, I am satisfied that the potential harm to ongoing Commonwealth negotiations by the release of this information under FOI is a strong consideration which I am bound to consider. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

Your rights of review

36. 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).

37. 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 Infrastructure and Transport
    GPO Box 594
    Canberra ACT 2601
    Fax: +61 2 6247 1347
    Email: FOI@infrastructure.gov.au

38. 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 review by 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 3
    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.

John Doherty
Executive Director, Aviation and Airports

9 August 2011

Schedule of documents

Applicant:

Decision date: **August 2011**

FOI reference number: **11-73**

Documents: **Documents relating to aircraft noise**

Document reference (FOI 11-25 reference)	Date of document	Author	Recipient	Document description	Full, partial or nil release
1 (52)	29 April 2010	Unknown	Unknown	Airport safeguarding initiative	Partial - s 47B
2 (66)	20 October 2010	Scott Stone	NASAG	Alternative Noise Metrics proposal paper	Full
3 (74)	3 May 2010	Scott Stone	Mike Mrdak	Minute to Mike Mrdak re: Inaugural meeting of NASAG	Partial - s 47B
4 (77)	Unknown	DOIT	Unknown	Principles for a national land use planning regime near airports and flight paths - paper	Nil - s 47C

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
(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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;
  (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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).

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

(d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

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

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of

John Doherty, Executive Director, Aviation and Airports

Applicant:

Decision date: **August 2011**

FOI reference number: **11-74**

Documents: **Documents relating to aircraft noise**

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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, John Doherty, Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) 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 24 June 2011 you made a request for access to documents in the possession of the Department of Infrastructure and Transport (the Department). Your request sought access to:

   i) Response to draft approval letters and section 89(4) interpretation from Hilary Manson, AGS, dated 22 September 2009;
   ii) package, including ministerial submission to the Hon Anthony Albanese, dated 29 September 2009, authored by Eleanor Dun;
   iii) email from Luke Osborne to Liz Wilson dated 7 January 2009 requesting OTS comments on edMDP;
   iv) email from Luke Osborne to Kai Everist dated 21 August 2009 with comments from Aviation Environment section;
   v) email from Luke Osborne to Karen Gosling discussing possible legal advice for possible use of s89(4) dated 10 September 2009;
   vi) airport safeguarding initiative document dated 29 April 2010;
   vii) alternative noise metrics proposal paper by Scott Stone dated 20 October 2010;
   viii) Scott Stone's minute to Mike Mrdak re inaugural meeting of NASAG dated 3 May 2010; and
   ix) Department of Infrastructure and Planning document entitled 'Principles for a national land use planning regime near airports and flight paths'.

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. I have not considered documents:

   vi) airport safeguarding initiative document dated 29 April 2010;
   vii) alternative noise metrics proposal paper by Scott Stone dated 20 October 2010;
   viii) Scott Stone's minute to Mike Mrdak re inaugural meeting of NASAG dated 3 May 2010; and
   ix) Department of Infrastructure and Planning document entitled 'Principles for a national land use planning regime near airports and flight paths

   as described in your request as they are subject to another request currently being considered by the Department with the reference number FOI 11-73.

6. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Decision

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

In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by deletions, of the following document/s:

- document 2 (assessment package including Ministerial Submission and assessment templates)

I have decided to refuse access to the following documents:

- document 1 (response to draft approval letters and section 89(4));
- document 4 (email with comments from Aviation Environment Section); and
- document 5 (email discussing possible legal advice for possible use of section 89(4)).

I have decided to grant full access to the following document:

- document 3 (email requesting Office of Transport Security comments on edMDP)

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 Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
   - Deliberative process documents (Section 47C)
   - The Public Interest Test (Section 11A(5)).

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

Deliberative process documents

Documents 1 and 5

10. I have exempted in full documents 1 and 5 'Response to draft approval letters and section 89(4) interpretation' and 'Email discussing possible legal advice for possible use of s89(4)'.

11. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which has been redacted or exempt in these documents involves communications which are considered deliberative processes relevant to the functions of the Department, namely regulation of civil aviation and airports. The redacted material and exempt documents do not include operational information nor purely factual information (Section 47C(2)).

12. Documents 1 and 5 discuss opinions about the interpretation of legislation administered by the Department. Therefore, these documents would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

13. After coming to the conclusion that these documents are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest.

14. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

Whilst I have considered these factors, and agree that the objects of the Act should be promoted, I am not satisfied that release of these emails will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. The interpretation of legislation was not conclusive and would not necessarily have any real effect on either of these considerations.

15. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to prejudice the management function of an agency; and
(b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

I am satisfied that the disclosure of these deliberations would prejudice the management function of an agency, namely the management of airports and the administration of the *Airports Act 1996.*

The deliberative material disclosed in these emails may also, by implication, result in the flow of information to the Commonwealth being impeded. Internal discussions about the interpretation of a particular part in the legislation (which is common in a regulatory environment) may, inadvertently, cause doubt about the Government's ability to manage its functions. If stakeholders were to cease or limit the supply of information, the operation of this legislation would be compromised.

16. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to documents 1 and 5 would, on balance, be contrary to the public interest insofar as the provision of information to the Commonwealth is a vital component to the successful operation of this legislation, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Document 2

17. I have decided to exempt in part Document 2 'Assessment package including Ministerial Submission and assessment templates'.

18. I have redacted the first three pages of Document 2. It is a Ministerial Submission which discloses matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

19. After coming to the conclusion that part of this document is conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest.

20. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

Whilst I have considered these factors, and agree that the objects of the Act should be promoted, I am not satisfied that release of the first part of this Ministerial Submission will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure.

21. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to prejudice the management function of an agency;
(b) reasonably be expected to be exploited by those seeking to have airport developments approved; and
(c) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

The internal minute was prepared for the Minister regarding the Master Development Plan (MDP) for Southern Cross University. It was prepared by the Department and provides advice to the Minister in his capacity as approver of the MDP. It necessarily involves a great deal of deliberative matter; the disclosure of which would prejudice the management function of an agency, namely the management of airports and our role as advisory agency to the responsible Minister.

I believe that disclosure of this Minute would reveal to the public relevant deliberations which may influence the Minister in his exercise of discretion when approving or not approving MDPs. Therefore, it may cause future applicants of MDPs under the *Airports Act 1996* to tailor their responses accordingly. This may cause applicants to fail to disclose information which they consider may be detrimental to their application. In the interests of ensuring that applicants provide the Commonwealth with all relevant information, and to ensure that the Department provides the best advice to the Minister, I do not believe this part of document 2 should be released.

22. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the first part document 2 would, on balance, be contrary to the public interest insofar as the management functions of the agency and future supply of information are paramount, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

23. Apart from these three pages, the remainder of the document is to be released.

Document 4

23. I have decided to exempt in full document 4 'Email with comments from Aviation Environment section.'

This email contains a preliminary opinion based on conjecture. It is, therefore, matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

24. After coming to the conclusion that these document are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest.

25. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

Whilst I have considered these factors, and agree that the objects of the Act should be promoted, I am not satisfied that release of this email will inform any debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure.

26. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to prejudice the management function of an agency; and
(b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

I am satisfied that the disclosure of these deliberations would prejudice the management function of an agency, namely the management of airports and the administration of the *Airports Act 1996.*

The deliberative material disclosed in these emails may also, by implication, result in the flow of information to the Commonwealth being impeded. Internal discussions about the viability of MDPs may, inadvertently, cause doubt about the Government's ability to manage its functions.
Whilst this is a not a public interest factor I am permitted to consider, there is a real possibility that stakeholders might cease or limit the supply of information based on this doubt. This would, in turn, compromise the MDP approval process.

27. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to document 4 would, on balance, be contrary to the public interest insofar as management of the functions of the Department are principal, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Your rights of review

28. 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).

29. 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 Infrastructure and Transport
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

30. 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 internal 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 3
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.

John Doherty
Executive Director, Aviation and Airports

22 August 2011

Schedule of documents

Applicant:

Decision date: **2011**

FOI reference number: **11-74**

Documents: **Documents relating to aircraft noise**

Document reference (FOI 11-25 reference)	Date of document	Author	Recipient	Document description	Full, partial or nil release
1 (19)	22 September 2009	Hilary Manson AGS	Luke Osborne	Response to draft approval letters and section 89(4)	Nil - s 47C
2 (30)	29 September 2009	Eleanor Dun	The Hon Anthony Albanese	Assessment package including Ministerial Submission and assessment templates	Partial - s 47C
3 (32)	7 January 2009	Luke Osborne	Liz Wilson	Email requesting Office of Transport Security comments on edMDP	Full
4 (41)	21 August 2009	Luke Osborne	Kai Everist	Email with comments from Aviation Environment Section	Nil - s 47C
5 (46)	10 September 2009	Luke Osborne	Karen Gosling	Email discussing possible legal advice for possible use of section 89(4)	Nil - s 47C

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
(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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;
  (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
  (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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).

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision of John Doherty, Executive Director, Aviation and Airports

Applicant:	
Decision date:	**14 September 2011**
FOI reference number:	**11-75**
Documents:	**Documents regarding meetings of the National Airports Safeguarding Advisory Group (NASAG)**

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Summary

1. I refer to your letter dated the 27 June 2011 in which you requested access under the *Freedom of Information Act 1982* (**FOI Act**) to various documents concerning the meetings of the National Airports Safeguarding Advisory Group (**NASAG**).I have made a decision to release the documents subject to your request in part.

Authority to make this decision

2. I, John Doherty, Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (**the Department**) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the FOI Act.

Decision

3. I have identified 58 documents in the possession of the Department that fall within scope of your FOI request.

   I have decided to release 52 documents in full.

   I have decided to refuse access to 4 documents in full. I am satisfied that these documents are exempt documents under Sections 47B and 47C.

   I have decided to release 2 documents with some parts deleted pursuant to Section 22 of the FOI Act. I am satisfied that the documents contain material which is either irrelevant to your FOI request, or contain material which is exempt under Section 47F.

Background

4. On 27 June 2011 you made a request for access to documents in the possession of the Department. Your request sought access to:

   i) Evidence or otherwise pertaining to meetings of NASAG;
   ii) prepared for or in relation to meetings of NASAG; or,
   iii) consulted in connection with meetings of NASAG
   between 27 October 2010 and 17 June 2011.

5. On 7 July 2011 the Department wrote to you and advised that the scope of your request was very broad and would encompass a large number of documents. The Department advised that such a request might substantially and unreasonably divert the resources of the Department from its other operations (and, therefore, be refused), or, alternatively, the charges which could be imposed in relation to such a request may be very costly. Accordingly, we suggested that you consider re-phrasing your request to provide more details of the specific subject-matter of the documents relating to NASAG meetings you were seeking. The Department advised you that your request would be on hold pending your response.

6. On 26 July 2011 you amended your request to seek:

1. *Minutes, notice of meeting and associated circulation papers for each meeting of NASAG since 6 August 2010;*
2. *Pages 5, 6 and 7 of "Paper for Distribution" for NASAG meeting 27 October titled "Alternative Noise Metrics";*
3. *Copy of the presentation of Mr Southgate, including charts referred in Item 5 of the Record of the Meeting of 6 August 2010;*
4. *Copy of the paper presented by Mr Scott under Item 3 of the Record of Meeting of NASAG on 6 August 2010;*
5. *Copy of the response after consideration "out of session", to the paper presented by Mr Scott to the NASAG meeting on 6 August 2010;*
6. *Copies of the following identified in the record of 27 October 2010 meeting of NASAG page 4 Item 6 "Possible contours for Brisbane and Sydney based on 10xN70events 50xN65 events, and 100xN60 events. And contours for night noise".*

Documents subject to this request

7. 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. The documents subject to your request are listed in the schedule of documents at Schedule 1.

8. I have not considered documents 2, 4, 7, 10, 19, 27 or 56 as they were considered and released in full under FOI request 11-25.

9. I have not considered documents 23 or 54 as they were considered and released in full under FOI request 11-73.

Decision

10. I have made a decision to release 58 documents subject to your request in full, exempted 4 documents in full under sections 47B and 47C and 2 documents in part under section 47F of the FOI Act.

    I have decided to exempt the following documents in their entirety:

    - document 22 in the schedule of documents (Principles for a national land use planning regime near airports and flight paths);
    - document 28 in the schedule of documents (NASAG Paper 4/3 dated 3 December 2010);
    - document 49 in the schedule of documents (Draft report: Principles of a national land use planning regime near airports and flight paths) and
    - document 57 in the schedule of documents (NASAG document with State Government Input, dated 28 September 2010).

    I have decided to release the following documents with some parts deleted:

    - document 8 (NASAG contact details); and
    - document 20 in the schedule of documents (NASAG member contact details).

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

Commonwealth-State relations

11. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:
    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or
    - would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

    For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

12. Documents 22 and 49 are draft internal documents which discuss various options and opinions regarding national land use planning near airports and flight paths. Documents 28 and 57 contain input from NASAG Members regarding these options and opinions. The opinions and options contained within these papers have not been finalised and agreement is yet to be reached. There is a likely expectation that damage between the Commonwealth and State and Territory governments which comprise NASAG could result from the premature release of this information. Specifically, I believe that disclosure of this material may:
    - impair or prejudice the future flow of information to the Commonwealth and State and Territory members of NASAG; and
    - adversely affect negotiations between the Commonwealth and the States.

Deliberative processes

13. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon the assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The exempt documents involve communications which are considered deliberative processes relevant to the functions of the Department, namely regulation of civil aviation and airports. The exempt documents do not include operational information nor purely factual information (Section 47C(2)).

14. Documents 22, 28, 49 and 57 constitute matter in nature of, or relating to, opinion, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

15. After coming to the conclusion that the documents are conditionally exempt in accordance with Sections 47B and 47C(1), I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest.

16. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

17. I have considered these factors, and agree that the objects of the Act should be promoted. However, I am not satisfied that release of documents 22, 28, 49 and 57 will inform debate on a matter of public importance, nor have any effect on the effective oversight of public expenditure. The documents are drafts which have not been approved by Commonwealth, State or Territory governments and governments have not reached a final policy position on the issues. Therefore, the opinions contained within the documents may not provide any sound basis for public debate, additional to that which is already publicly available.

18. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to have a negative impact on Commonwealth-State relations;
(b) reasonably be expected to harm the interests of an individual or group of individuals;
(c) reasonably be expected to prejudice the management function of an agency; and
(d) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

I am satisfied that the disclosure of these deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government advisory group, namely NASAG. The deliberations contained within documents 22, 28, 49 and 57 have not been finalised and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the deliberative processes undertaken by the Department and its external stakeholders.

19. The deliberative material disclosed in documents 22, 28, 49 and 57 may also, by implication, result in the follow of information to the Commonwealth being impeded. The documents are internal draft documents and if misconstrued may, inadvertently, cause doubt about the Government's ability to manage its functions. Whilst this is a not a public interest factor I am permitted to consider, there is a real possibility that stakeholders might cease or limit the supply of information to the Commonwealth based on this doubt. This may, in turn, prejudice the Department's ability to undertake its functions effectively and compromise the administration of a national land use planning regime near airports and flight paths.

20. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and States is an essential requirement in the effective regulation of civil aviation and airports. Secondly, I am satisfied that potential harm to ongoing Commonwealth negotiations by the release of this information under the FOI is a strong consideration which I am bound to consider. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

Documents containing personal information

Documents 8 and 20

21. I have exempted part of documents 8 and 20.

22. Section 47F(1) relevantly provides that a document is an exempt document if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

23. Documents 8 and 20 contain personal information, being the contact details of individuals. I consider that the release of this information would be an unreasonable disclosure of personal information of the relevant individuals. There is a risk that if disclosed, personal contact details could be subject to misuse or other dealings contrary to the wishes of the individuals.

24. Finally I have weighed the factors to determine where the public interest lies. I have decided that access to the personal information in documents 8 and 20 contains information which is exempt under section 47F(1). I am satisfied that the factors against disclosure outweigh those in favour of access.

Charges applying to your request

25. On 3 August 2011 the Department provided you with a notice of your liability to pay a charge, and a preliminary estimate in the amount of $966.58. On 17 August 2011 we received full payment of the charges from you. As your request has now been finalised you are not liable for any further charges.

Your rights of review

26. 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).

27. 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 Infrastructure and Transport
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

28. 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 internal review from the Information Commissioner.

29. 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 3
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.

Contacts

If you wish to discuss this decision, please contact [redacted] or [redacted].

Yours sincerely,

John Doherty, Executive Director, Aviation and Airports
5 Sept 2011

Australian Government

Department of Infrastructure and Transport

FOI

Schedule 1

Schedule of documents

Applicant:

Decision date: **14 September 2011**

FOI reference number: **11-75**

Documents: **Documents regarding meetings of National Airports Safeguarding Advisory Group (NASAG)**

Document reference	Date of document	Pages Nos	Author	Recipient	Document description	Decision	Exemption provision
1	27/04/10	1	Dilip Mathew	NASAG	Notification of 1st NASAG meeting	Release in full	
2	07/05/10	1	DOIT	NASAG	NASAG Draft Meeting Agenda	Release in full	Released in full in 11-25
3	20/1209	2	DOIT	NASAG	White Paper p.166-167	Release in full	

4	Unknown	5	Unknown	NASAG	Summary of possible elements of a safeguarding framework	Release in full	Released in full in 11-25
5	24/06/10	1	DOIT	NASAG	NASAG 2 meeting details	Release in full	
6	27/10/10	1	DOIT	NASAG	NASAG 2 agenda	Release in full	
7	Unknown	4	DOIT	NASAG	NASAG – Draft record of meeting May 2010	Release in full	Released in full in 11-25
8	06/08/10	1	DOIT	NASAG	NASAG contact details	Release with deletions	s.47 F
9	Unknown	1	DOIT	NASAG	Action Items Log	Release in full	
10	31/07/10	4	Scott Stone	NASAG	Safeguarding of airports – possible principles for a national land use planning regime near airports and flight paths – meeting paper	Release in full	Released in full in 11-25
11	06/08/10	3	DOIT	NASAG	Managing the risks of wild life strikes in the vicinity of airports	Release in full	
12	28/08/10	22	US Department of Transportation		Advisory Circular	Release in full	
13	06/08/10	3	DOIT	NASAG	Impacts of wind turbines and wind	Release in full	

					farms on aviation		
14	September 2004	4	CASA		Advisory Circular	Release in full	
15	Unknown	2	US Federal Aviation Administration		Guidance material	Release in full	
16	06/08/10	3	DOIT	NASAG	Building generated turbulence at airports	Release in full	
17	13/10/10	1	DOIT	NASAG	Notice of 3rd NASAG meeting	Release in full	
18	27 /10/10	1	DOIT	NASAG	NASAG 3 Agenda	Release in full	
19	06/08/10		DOIT	NASAG	NASAG – Draft record of meeting August 2010	Release in full	Released in full in 11-25
20	27.10.10	1	DOIT	NASAG	NASAG member contact details	Release with deletions	s.47F
21	Unknown	2	DOIT	NASAG	Action log	Release in full	
22	Unknown	6	DOIT	NASAG	Principles for a national land use planning regime near airports and flight paths - paper	Exempt in full	s.47C, s.47b
23	20.10.10	8	Scott Stone	NASAG	Alternative Noise Metrics proposal paper	Release in full	Released in full 11-73
24	27.10.10	1	DOIT	NASAG	Status of current work 9pr 67)	Release in full	

25	4.11.10	6	DOIT	NASAG	Email and attachment	Release in full	
26	10.12.10	1	DOIT	NASAG	Draft agenda	Release in full	
27	27.10.10	8	DOIT	NASAG	Draft record of NASAG Meeting	Release in full	Released in full 11-25
28	3.12.10	9	DOIT	NASAG	NASAG Paper 4/3	Exempt in full	s.47C, s.47b
29	10.12.10	4	DOIT	NASAG	NASAG Paper 4/7	Release in full	
30	10.12.10	5	DOIT	NASAG	NASAG Paper 4/8	Release in full	
31	1.03.11	1	DOIT	NASAG	Email	Release in full	
32	18.03.11	1	DOIT	NASAG	Draft agenda	Release in full	
33	10.12.10	10	DOIT	NASAG	Draft record of meeting	Release in full	
34	Undated	2	DOIT	NASAG	Status Report	Release in full	
35	10.03.11	3	DOIT	QLD NASAG Member	Letter and attachment	Release in full	
36	Undated	9	Australian Aviation Wildlife Hazard Group	NASAG	Draft report	Release in full	
37	Undated	1	Australian Aviation Wildlife Hazard Group	NASAG	Attachment A to draft report	Release in full	
38	4.03.11	1	Australian Aviation Wildlife Hazard Group	NASAG	Attachment B to draft report	Release in full	

39	May 2010	1	Australian Aviation Wildlife Hazard Group	NASAG	Attachment C to draft report	Release in full	
40	December 2010	10	Australian Aviation Wildlife Hazard Group	NASAG	Attachment D to draft report	Release in full	
41	Undated	8	DOIT	NASAG	Draft guidelines for land use planners	Release in full	
42	Undated	1	DOIT	NASAG	Attachment A(i) to draft report	Release in full	
43	Undated	1	DOIT	NASAG	Attachment A (ii) to draft report	Release in full	
44	Undated	1	DOIT	NASAG	Attachment B to draft report	Release in full	
45	September 2008	4	DOIT	NASAG	Attachment C to draft report	Release in full	
46	Undated	10	DOIT	NASAG	Draft Guidelines to manage the risk to aviation posed by Wind Turbine Farms	Release in full	
47	Undated	4	DOIT	NASAG	Draft Guidelines to manage the risk to pilots from lighting near airports	Release in full	
48	Undated	1	DOIT	NASAG	Attachment A to draft guidelines	Release in full	

49	Undated	5	DOIT	NASAG	Draft report Principles of a national land use planning regime near airports and flight paths	Exempt in full	s.47C, s.47b
50	1.08.11	5	DOIT	NASAG	Input table	Release in full	
51	9.12.10	1	Port Stephens Council	DOIT	Letter	Release in full	
52	18.03.11	5	DOIT	DOIT	NASAG Minutes 18 March 2011	Release in full	
53	15.07.11	1	DOIT	NASAG	Email	Release in full	
54	27.10.10	7	DOIT	NASAG	NASAG Paper 3/6	Release in full	Released in full in FOI 11-73
55	6.08.10	12	DOIT	NASAG	Powerpoint presentation	Release in full	
56	6.08.10	4	DOIT	NASAG	Agenda Item 3	Release in full	Released in full in FOI 11-25
57	28.09.10	28	DOIT	NASAG	Draft report with State Government Input	Exempt in full	s.47B, s.47b
58	Undated	2	DOIT	NASAG		Release in full	

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
   (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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;
   (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
   (b) access to the document could result in any person misinterpreting or misunderstanding the document;
   (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
   (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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).

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

(d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

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

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

47F Public interest conditional exemptions—personal privacy

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

(a) the extent to which the information is well known;

(b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

(c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant.

(3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

(4) Subsection (5) applies if:

(a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and

(b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

(a) carries on the same occupation, of a kind mentioned in the definition of qualified person in subsection (7), as the first-mentioned qualified person; and

(b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist;

(d) a counsellor;

(e) a social worker.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of Karen Gosling, Executive Director, Surface Transport Policy

Applicant:	
Decision date:	**1 December 2011**
FOI reference number:	**12-24**
Documents:	**Access to the sections of minutes, actions arising and decisions made at the CAP in May Meeting 2011 that relate to Limited Quantities and Retail Distribution Loads.**

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Summary

1. I refer to your email letter dated the 12 October 2011 in which you requested access under the *Freedom of Information Act 1982* (**FOI Act**) to various documents concerning the minutes, actions arising and decisions made at Competent Authorities Panel (CAP) meeting held in Hobart Tasmania from 25th to 26th May 2011.

Authority to make this decision

2. I, Karen Gosling, Executive Director, Surface Transport Policy, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (**the Department**) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the FOI Act.

Background

3. On 12 October 2011 you made an FOI request for access to documents in the possession of the Department.

4. On 18 October 2011, you reduced the scope of your request and sought access to:

   "the sections of minutes, actions arising and decisions made at the CAP in May Meeting 2011 that relate to Limited Quantities and Retail Distribution Loads".

5. On 28 October 2011 the Department provided you with an estimate of a charge of price.

6. On 1 November 2011 you agreed to pay the charge, and paid a deposit of $81.93.

7. On 8 December 2011 the Department decided to waive that the rest of the charges you were liable to pay. As your request has now been finalised you are not liable for any further charges.

Documents subject to this request

8. 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.

9. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Decision

10. I have made a decision to release 1 document subject to your request. I have decided to exempt 2 documents in full.

Reasons for decision

11. 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.

12. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions section 47B and section 47C of the FOI Act relevant to my decision:
    - Documents pertaining to State Commonwealth relations (Section 47B)
    - Deliberative process documents (Section 47C)

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

Documents affecting Commonwealth-State relations

Documents 1 and 2

13. I have exempted in full document 1 (Draft Competent Authorities Panel (CAP) Minutes of the 39th CAP Meeting held on Wednesday and Thursday 25 and 26 May 2011) and document 2 in full (Draft Incomplete CAP Actions Arising List dated May 2011) under section 47B of the FOI Act.

14. Section 47B of the FOI Act creates a conditional exemption where disclosure of a document either:
    - would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State (s 47B(a)), or
    - would divulge information or a matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth (s 47B(b)).

    For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).

15. I have exempted these documents as they are draft documents that may contain unofficial and unfinalised positions regarding the relationship between the Commonwealth and the States on various proposed submissions requesting national exemptions, determinations and classifications made under the Australian Dangerous Goods Code.

16. The documents are working documents which do not necessarily reflect finalised views and positions. Having regard to the sensitivities surrounding the 'Minutes' and 'Action Arising' documents there is a risk that disclosure would cause uncertainty and be misconstrued by State Governments. There is a reasonable expectation that damage between the Commonwealth and States could result from release of information and as a result there would be a reduction in trust and confidence. Specifically, I believe that disclosure of this material may:
    - impair or prejudice the future flow of information; and
    - adversely affect the development of future Commonwealth-State initiatives and interactions.

17. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47B, I must consider the Public Interest Test (Section 11A(5)). I have considered whether access to the documents would, on balance, be contrary to the public interest.

18. Firstly, I considered the following factors favouring access, specifically, that disclosure would:

(a) promote the objects of the FOI Act;
(b) inform debate on a matter of public importance; and
(c) promote effective oversight of public expenditure.

19. I have considered these factors, and agree that the objects of the FOI Act should be promoted. However, I am not satisfied that release of these documents will inform debate on a matter of public importance. The 'Draft Minutes' and 'Draft Incomplete Action Arising' documents represent a set of comments that was not finalised by the CAP members. The changes in these documents would divulge information that was communicated in confidence and jeopardise future negotiations between the Commonwealth, States and Territories.

20. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

(a) reasonably be expected to have a negative impact on Commonwealth-State relations;
(b) impair or prejudice the future flow of information to the Commonwealth; and
(c) adversely affect negotiations between the Commonwealth and the States.

As discussed, release of the information may have a detrimental effect on Commonwealth-State relations, and will, therefore prejudice the Department's ability to undertake its functions effectively.

21. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents would, on balance, be contrary to the public interest insofar as an open and cooperative relationship between the Commonwealth and States is an essential requirement in regulating the Australian Dangerous Goods Code. Secondly, I am satisfied that while there is a public interest in an informed public debate about the Australian Dangerous Goods Code in my view there is a greater public interest in the preservation of a harmonious working relationship with the States on national policy and reform. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access.

Deliberative process documents

Documents 1 and 2

22. I have exempted in full document 1 (Draft Competent Authorities Panel (CAP) Minutes of the 39th CAP Meeting held on Wednesday and Thursday 25 and 26 May 2011) and document 2 in full (Draft Incomplete CAP Action Arising List dated May 2011) under section 47C of the FOI Act.

23. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which has been exempt in these documents involves communications which are considered deliberative processes relevant to the functions of the Department. The exempted documents do not include operational information nor purely factual information. The documents contain deliberative matter, insofar as they contain opinions, advice or recommendations that communicate unofficial and unfinalised positions regarding various proposed approaches to submissions requesting national exemptions, determinations and classifications that may operate at variance to the Australian Dangerous Goods Code. (Section 47C(2)).

24. Document 1 is the 'Draft Competent Authorities Panel (CAP) Minutes of the 39th CAP Meeting held on Wednesday and Thursday 25 and 26 May 2011'. It lists various submissions, opinions and exemptions under the Australian Dangerous Goods Code that will not be finalised until the next CAP meeting in late November. Therefore, it constitutes matter in the nature of, or relating to, opinion, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

25. Document 2 is the 'Draft Incomplete CAP Action Arising List dated May 2011' listing various decisions and opinions that will not be finalised until the next CAP meeting. Therefore, the document constitutes matter in the nature of, or relating to, opinion, advice or recommendations obtained, prepared or recorded, or consultation or deliberations that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department (Section 47C(1)).

26. After coming to the conclusion that documents 1 and 2 are conditionally exempt in accordance with Section 47C, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to the document would, on balance, be contrary to the public interest.

27. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
    (a) promote the objects of the FOI Act;
    (b) inform debate on a matter of public importance; and
    (c) promote effective oversight of public expenditure.

    Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that release of the draft documents 1 and 2 will significantly inform debate on a matter of public importance. Documents 1 and 2 are draft documents that were prepared for the deliberative purposes of the Department, insofar as they contain opinions, advice or recommendations that were not been finalised within the Department at that time. The documents are not representative of the final agreements reached between the Commonwealth and other external stakeholders. Therefore, the opinions contained within the documents may not provide any sound bases for public debate, additional to that which is already publicly available.

28. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

    (a) reasonably be expected to prejudice the management function of an agency; and
    (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

    I am satisfied that the disclosure of these deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government function. The deliberations contained within document 1 and 2 had not been finalised and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the deliberative processes undertaken by the Department and its external stakeholders.

    The deliberative material disclosed in documents 1 and 2 may, by implication, result in the flow of information to the Commonwealth being impeded. As internal draft documents, they may be misconstrued and cause doubt about the Government's ability to manage its functions. There is an expectation that stakeholders might cease or limit the supply of information to the Commonwealth based on this doubt.

29. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to documents 1 and 2 would, on balance, be contrary to the public interest insofar as the provision of information to the Commonwealth is a vital component to the successful operation of

the Department's functions, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Your rights of review

30. 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).

31. 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 Infrastructure and Transport
    GPO Box 594
    Canberra ACT 2601
    Fax: +61 2 6247 1347
    Email: FOI@infrastructure.gov.au

32. 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 review by the Information Commissioner.

33. 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.

34. 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 3
    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.

Contacts

35. If you wish to discuss this decision, please contact or email

Karen Gosling
Executive Director
Surface Transport Policy

December 2011

Australian Government

Department of Infrastructure and Transport

Schedule of documents

Applicant:

Decision date: **December 2011**

FOI reference number: **12-24**

Documents: **Retail Distribution Loads and Limited Quantities as discussed in the Minutes, actions arising and decisions made at the Competent Authorities Panel (CAP) meeting held on 25 and 26 May 2011 in Hobart Tasmania**

Document reference (FOI 12-24 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
1	25 May 2011	22	G Drive	Department of Infrastructure and Transport	Competent Authorities Panel Members	Draft Minutes of CAP Meeting 25 and 26 May 2011	Exempt in full	s.47B s.47C
2	June 2011	3	G Drive	Department of Infrastructure and Transport	Competent Authorities Panel Members	Draft Incomplete Actions Arising List	Exempt in full	s.47B s.47C
3	Undated	38	G Drive and Internet	Department of Infrastructure and Transport	Public	Decision register	Release in full	

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).**

47B Public interest conditional exemptions—Commonwealth-State relations etc.

A document is conditionally exempt if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; or

(c) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and Norfolk Island; or

(d) would divulge information or matter communicated in confidence by or on behalf of the Government of Norfolk Island or an authority of Norfolk Island, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or

(e) would, or could reasonably be expected to, cause damage to relations between Norfolk Island and a State; or

(f) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of Norfolk Island, to an authority of Norfolk Island or to a person receiving the communication on behalf of Norfolk Island or of an authority of Norfolk Island.

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

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of Jim Wolfe, A/g Executive Director, Aviation and Airports

Applicant:

Decision date: 10 **November 2011**

FOI reference number: **12-26**

Documents: **FOI regarding Worley Parsons Report on Possible Aviation Sites**

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Summary

1. I refer to your email letter dated the 18 October 2011 in which you requested access under the *Freedom of Information Act 1982* (**FOI Act**) to a Worley Parsons report on possible aviation sites that you believed was completed for the Department earlier in the year.

Authority to make this decision

2. I, Jim Wolfe, A/g Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (**the Department**) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the FOI Act.

Decision

3. I have identified 1 document in the possession of the Department that falls within scope of your FOI request.

4. I have decided to not release the document. I am satisfied that this document is an exempt document under sections 34 and 47C.

Background

5. On 18 October 2011 you made an FOI request for access to documents in the possession of the Department. Your request sought access to:

   "a Worley Parsons report on possible aviation sites, understood to have been completed for the department earlier this year".

Documents subject to this request

6. The Department has undertaken a search of its records and has identified a document that is in scope of your request, as set out above.

7. The document subject to your request is listed at Schedule 1.

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 findings were based and the reasons for my decision to not grant access to the document follows.

9. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Commonwealth Government.

10. I also considered the following provisions of the FOI Act relevant to my decision:
    - Cabinet documents (Section 34); and
    - Deliberative documents (Section 47C).

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

Statement of reasons

Cabinet document

Document 1

11. Document 1 is a 'Draft Technical Report' that contains information about possible aviation sites that has been brought into existence for the dominant purpose of submission for consideration by the Cabinet.

12. Section 34(1)(a)provides that a document is an exempt document if it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; and section 34(1)(d) provides that a draft of a document brought into existence for the dominant purpose of submission for consideration by the Cabinet is also an exempt document.

13. Accordingly, I am satisfied that the above document is an exempt document under sections 34(1)(a) and 34(1)(d).

Deliberative document

Document 1

14. Document 1, the 'Draft Technical Report', also contains deliberative matter that includes:
    - advice that was obtained, prepared or recorded; or
    - consultation or deliberation which has and will take place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department or the Commonwealth Government.

15. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The information which is exempt in this document involves communications and advice which are considered to be deliberative processes relevant to the functions of the Department. The exempt information does not include operational information nor purely factual information (Section 47C(2)).

16. Having found that the document contains material that is deliberative in nature, I must consider whether the disclosure of document 1, the 'Draft Technical Report', would be contrary to the public interest. This requires that I determine whether the balance of the public interest lies in favour of disclosure or non-disclosure of the contents of the draft technical report.

17. The Technical Report is a draft document and has not been finalised. It does not reflect the final views or decisions of the Department in relation to aviation sites, or processes which should be followed to determine aviation sites. It is a document still in development and includes information which is still in the process of being refined in the course of the formulation of policy and consideration of options. Public focus would be turned towards the details of informal deliberative discussions and information rather than the substantive issues themselves.

18. I am of the view that the factors discussed above outweigh the public interest factors in favour of disclosure, on the basis that:

- it would not make a valuable contribution to public debate to release the document concerned with information and matters that were not fully settled, or proposals or recommendations that may not be adopted or implemented; and
- the information and comments in this document in isolation do not accurately reflect future changes, if any, that will be made to the final document and the reason for those changes; and
- disclosure of the document is likely to jeopardise frankness and candour of future deliberative communications between government officials and contractors, which may impact on the quality of advice and information provided to the Department, the Minister and other senior government officials.

19. Having regard to these factors, I am satisfied that, on balance, it would be contrary to the public interest to disclose the document.

Your rights of review

20. If you disagree with the 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).

21. 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 Infrastructure and Transport
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

22. 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 a review by the Information Commissioner.

23. 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.

24. 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 3
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.

Contacts

25. If you wish to discuss this decision, please contact or

Yours sincerely,

Jim Wolfe
A/g Executive Director
Aviation and Airports

10 November 2011

Australian Government

Department of Infrastructure and Transport

Schedule of documents

Applicant:

Decision date: 10 **November 2011**

FOI reference number: **12-26**

Documents: **FOI regarding Worley Parsons Report on Possible Aviation Sites**

Document reference (FOI 12-26 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
1	October 2011	350	G Drive	Worley Parsons, on behalf of, Department of Infrastructure and Transport	Department of Infrastructure and Transport	Draft Technical Report	Exempt in full	s.34 s.47C

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
   (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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;
   (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
   (b) access to the document could result in any person misinterpreting or misunderstanding the document;
   (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
   (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

34 Cabinet documents

General rules

(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;
      (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.

Exceptions

(4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.

(5) A document by which a decision of the Cabinet is officially published is not an exempt document.

(6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:

(a) the disclosure of the information would reveal a Cabinet deliberation or decision; and

(b) the existence of the deliberation or decision has not been officially disclosed.

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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

Australian Government

Department of Infrastructure and Transport

FOI

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

Decision and reason for decision of James Wolfe, A/g Executive Director, Aviation and Airports

Applicant:

Decision date: 7 **December 2011**

FOI reference number: **12- 41**

Documents: **All documents consulted and relied upon in drafting the second, third and fifth paragraphs of a letter dated 2 May 2011 from Minister Albanese to the Hon Brad Hazzard MP.**

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Summary

1. I refer to your letter dated 28 November 2011 in which you requested access under the *Freedom of Information Act 1982* **(FOI Act)** to all documents consulted and relied upon in drafting the second, third and fifth paragraphs of a letter dated 2 May 2011, from Minister Albanese to the Hon Brad Hazzard MP.

Authority to make this decision

2. I, James Wolfe, A/g Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (**the Department)** to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the FOI Act.

Background

3. On 28 November 2011 your FOI request was received by the Department for access to documents in the possession of the Department. Your request sought access to:

   Minister Albanese's letter dated 2 May 2011 to the Hon Brad Hazzard MP:

   1. *All documents consulted or relied upon in drafting, or otherwise supporting, the second paragraph of the letter and, in particular, the proposition therein that "Approval of the LEP in its current form and the associated rezoning would seriously compromise the future development of Canberra Airport...".*

   2. *All documents consulted or relied upon in drafting or otherwise supporting the second paragraph of the letter and, in particular, the proposition therein that "Approval of the LEP in its current form would seriously compromise ... the national interest".*

   3. *All documents consulted or relied upon in drafting or otherwise supporting the third paragraph of the letter and in particular, which define the phrases "aircraft flight paths" and "under aircraft flight paths" as used therein.*

   4. *All documents consulted or relied upon in drafting or otherwise supporting the fifth paragraph of the letter and, in particular, the sentence therein that 'Proceeding with noise sensitive development, including residences and schools, in South Tralee will impact on the future availability of noise abatement for the whole of the Canberra and Queanbeyan communities and adversely affect the quality of life for existing and future communities.*

Decision

4. I have identified three documents in the possession of the Department that fall within scope of your FOI request. Two of these documents are publicly available on the Department's website.

Documents subject to this request

5. The Department has undertaken a search of its records and has identified three documents that fall within the scope of your request:

   1 "A National Aviation Policy Statement - the Aviation White Paper http://www.infrastructure.gov.au/aviation/nap/index.aspx:

   2 "Safeguards for airports and the communities around them" http://www.infrastructure.gov.au/aviation/environmental/safeguarding.aspx: and

   3 A minute that accompanied the letter to the Hon Brad Hazzard MP.

Reasons for decision

6. 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 findings were based and the reasons for my decision to grant partial access to documents follow.

7. In making my decision, I had regard to Sections 3, 11, 11A and 11B of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Commonwealth Government. I also considered the following provisions of the FOI Act relevant to my decision:
   - Deliberative documents (Section 47C)

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

Deliberative process documents

Document 3

9. I have found that document 3 is an exempt document under section 47C and is exempt in full.

10. Section 47C(1) provides an exemption for documents disclosing deliberative processes, which is conditional upon an assessment of the public interest in releasing material. A deliberative process involves the exercise of judgment in developing and making selection from different options. It refers to a process of reflection upon the wisdom and expediency of a course of action. The exempted document involves communications which are considered deliberative processes relevant to the functions of the Department. The exempt document does not include operational information nor purely factual information. The document contains deliberative matter, insofar as it contains opinions, advice or recommendations. The briefing paper is a working document which canvasses options in relation to the proposed development at Tralee (Section 47C(1)).

11. After coming to the conclusion that document 3 is conditionally exempt in accordance with Section 47C, I have considered the Public Interest Test (Section 11A(5))and whether access to the document would, on balance, would be contrary to the public interest.

12. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
    (a) promote the objects of the FOI Act; and
    (b) inform debate on a matter of public importance.

13. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that release of the minute will significantly inform debate on a matter of public importance. Document 3 was prepared for the deliberative purposes of the Department, insofar as it contains and canvasses advice or recommendations that were not finalised within the Department at that time. The document is not representative of any agreement reached between the Commonwealth and the NSW State Government. Therefore, the information contained within the document may not provide any sound bases for public debate, additional to that which is already publicly available.

14. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:

    (a) reasonably be expected to prejudice the management function of an agency; and
    (b) reasonably be expected to prejudice an agency's ability to obtain similar information in the future.

15. I am satisfied that the disclosure of these deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government agreement. The deliberations contained within document 3 were still under consideration by the Minister and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the deliberative processes undertaken by the Department and its external stakeholders.

16. The deliberative material disclosed in document 3 may, by implication, result in the flow of information to the Commonwealth being impeded. The document may be misconstrued and cause doubt about the Government's ability to manage its functions. There is an expectation that stakeholders might cease or limit the supply of information to the Commonwealth based on this doubt.

17. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to document 3 would, on balance, be contrary to the public interest insofar as the provision of information to the Commonwealth is a vital component to the successful operation of the Department's functions, and the countervailing factors favouring access are not overriding considerations in this instance. I am satisfied that the factors against disclosure outweigh those in favour of access.

Your rights of review

18. 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).

19. 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 Infrastructure and Transport
GPO Box 594
Canberra ACT 2601
Fax: +61 2 6247 1347
Email: FOI@infrastructure.gov.au

20. 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 review by the Information Commissioner.

21. 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.

22. 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 3
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.

Contacts

23. If you wish to discuss this decision, please contact

Yours sincerely,

James Wolfe
A/g Executive Director
Aviation and Airports

7 December 2011

Australian Government

Department of Infrastructure and Transport

Schedule of documents

Document reference (FOI 12-41 reference)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
1	December 2009	161	Department of Infrastructure and Transport	Publicly available document (Department's website)	National Aviation White paper	Release in full	
2	June 2009	18	Department of Infrastructure and Transport	Publicly available document (Department's website)	Safeguards for airports and the communities around them: Discussion Paper	Release in full	
3	2.05.11	2	Department of Infrastructure and Transport	Minister of the Department of Infrastructure and Transport	Briefing paper	Exempt in full	s.47C

- "A National Aviation Policy Statement - the Aviation White Paper
http://www.infrastructure.gov.au/aviation/nap/index.aspx

- "Safeguards for airports and the communities around them"
http://www.infrastructure.gov.au/aviation/environmental/safeguarding.aspx

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).

11B Public interest exemptions—factors

Scope

(1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).

(2) This section does not limit subsection 11A(5).

Factors favouring access

(3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

(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.

Irrelevant factors

(4) 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 of confidence in the Commonwealth Government;

(aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

(d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

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.

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth; or

(d) the Government of Norfolk Island.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

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