



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: 21 February 2011

FOI reference number: 12-45

Documents: Documents concerning NASAG Minutes and meetings from
28 September 2011 to the date of the FOI request 8 December 2011

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Summary

1. I refer to your letter dated the 9 December 2011 in which you requested access under *The Freedom of Information Act 1982 (FOI Act)* to various documents concerning the meetings and minutes of the National Airports Safeguarding Advisory Group (NASAG) from 28 September 2011 to the date of your request 8 December 2011.

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.

Background

3. On 8 December 2011 you made a request for access to documents in the possession of the Department. Your request sought access to:
 - i) *Draft agendas, agendas, draft minutes, minutes, draft records of meetings and records of meeting for each meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 28 September 2011;*
 - ii) *Documents prepared for the purpose of being presented, tabled or otherwise considered at a meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 28 September 2011; and*
 - iii) *Correspondence, submissions or other representations (or records thereof) to or on behalf of NASAG created or received since 28 September 2011.*
4. You agreed to limit the scope of FOI request to information concerning NASAG and land use around airports.
5. On 23 December 2011 the Department provided you with an estimate of a charge in the amount of \$248.40.
6. On 18 January 2012 you agreed to pay the charge and paid \$248.40.

Decision

7. I have identified 16 documents in the possession of the Department that fall within scope of your FOI request.
8. I have decided to release 6 documents in full.
9. I have decided to release 6 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 and 47C.
10. I have decided to refuse access to 4 documents in full. I am satisfied that these documents are exempt documents under Sections 47B, 47C and 47G

Documents subject to this request

11. The Department has undertaken a search of its records and has identified all the documents that fall within the scope of your request.
12. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Relevant provisions

13. 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.
14. 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 concerning Commonwealth and State relations (Section 47B);
 - Deliberative process documents (Section 47C); and
 - Documents containing business information (Section 47G)
15. A full extract of all provisions I used to make my decision are provided in Schedule 2.

Statement of reasons

Commonwealth-State relations

Documents 3, 4, 5, 6, 8, 9, 11 12, 17, 18, 19, 20 and 21

16. I have exempted part of documents 3, 4, 5, 6, 11 and 12. I have fully exempted documents 8, 9, 17 18, 19, 20 and 21.
17. 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)).
18. For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).
19. Documents 8, 9, 17 18, 19, 20 and 21 are draft internal documents which discuss various options and opinions regarding national land use planning near airports and flight paths. These documents contain input from NASAG Members regarding these options and opinions. The canvassed opinions and options contained within these papers have not yet been finalised and agreement is yet to be reached by various NASAG members. 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.

20. 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.

21. 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.

22. I have considered these factors, and agree that the objects of the FOI Act should be promoted. I have decided to release parts of documents 3, 4, 5, 6, 11 and 12 to allow open access to most of the documents to promote the objects of the FOI Act. I also envisage that release of the information may have some benefit in informing debate on a matter of public importance. However, this benefit will be limited as it is an opinion of a proposed planning regime around land use near airports and adds very little additional factual information, or information about policy decision-making to that already in the public domain.

23. 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.

24. 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.

25. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to the documents 8, 9, 17, 18, 19, 20 and 21 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 meetings and negotiations with NASAG. Secondly, I am satisfied that any harm to the Commonwealth and States 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.

Deliberative process documents

Documents 3, 4, 5, 6, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20 and 21

26. I have exempted parts of documents 3, 4, 5, 6, 11 and 12. I have fully exempted documents 8, 9, 15, 16, 17, 18, 19, 20 and 21.
27. 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.
28. I have considered these factors, and agree that the objects of the FOI Act should be promoted. I have decided to release parts of documents 3, 4, 5, 6, 11 and 12 to allow open access to most of the documents to promote the objects of the FOI Act. I also envisage that release of the information may have some benefit in informing debate on a matter of public importance. However, the exempted parts of the 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 land use planning near airports. (Section 47C(2)).
29. After coming to the conclusion that documents 3, 4, 5, 6, 8, 9, 11, 12, 15, 16, 17, 18, 19, 20 and 21 are either conditionally partially or fully 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.
30. 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.
31. 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 documents 8, 9, 15, 16, 17, 18, 19, 20 and 21 will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of planning guidance for noise sensitive developments near airports. These documents 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 yet to be reached between the Commonwealth and other State NASAG members. Therefore, the opinions contained within the documents may not provide any sound bases for public debate, additional to that which is already publicly available.
32. 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.
33. 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 documents 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.
34. The deliberative material disclosed in the documents 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.
35. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to documents 8, 9, 15, 16, 17 and 18 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.

Public interest conditional exemption-business

Documents 15 and 16

36. I have found that documents 15 and 16 contain material the disclosure of which would cause an unreasonable and adverse effect on the business or professional affairs of different airports around Australia. These documents contain information in relation to the various planning compliances of airports and other business matters which are not otherwise publicly available. Specifically, I have found documents 15 and 16 to be exempt in full.
37. 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 (the Section is extracted in full at Schedule 2).
38. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself, however, I am satisfied that the information in question has some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.
39. Documents 15 and 16 contain draft planning information, opinions and submissions made to the Department by various airports from around Australia. The information was provided in confidence as expressly stated by the Chief Operating Officers of Australia's major airports to the Department in the relevant correspondence, on the understanding that the

documents would be kept confidentially based on the existing relationship between the Department and its external stakeholders.

40. The documents contain information which is not widely known. This information was provided by the Chief Operating Officers of Australia's major airports to assist the Department as part of its role in facilitating data in consideration of the national land use planning guidelines.
41. There is a reasonable expectation that the disclosure of the information contained in these documents would unreasonably affect various major airports in respect of its lawful business affairs to the extent that if their detailed views, financial information and research were made public, this could affect the ability of the airports to work with present and future governments.
42. In addition, it is likely that the disclosure of the documents would result in a loss of trust in the Department by the Chief Operating Officers of Australia's major airports, and could reasonably be expected to prejudice the future supply of information by that organisation to the Department in relation to its functions.

Public interest Test

43. Having satisfied myself that documents 15 and 16 are conditionally exempt in full, I am required to apply the public interest test before concluding that the documents are exempt from disclosure.
44. Section 11A(5) of the FOI Act requires that the Department 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.
45. Firstly, I have considered the following factor favouring disclosure, specifically that disclosure would:
 - (a) promote the objects of the Act (Section 11B(3))
46. I do not consider that release of these documents would inform debate on a matter of public importance. The information contained in these documents relates to business entities future planning abilities and data collection and is unlikely to affect a substantial section of the public.
47. 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.
48. 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 causing harm to a businesses, and would be detrimental to competition, and therefore, not in the public interest. I am, therefore, satisfied that the factors against disclosure outweigh those in favour of access in relation to documents 15 and 16.

Deletion of exempt or irrelevant material from documents

Documents 3, 4, 5 and 6

49. I have exempted part of documents 3, 4, 5 and 6 that are draft record of NASAG meetings including minutes and a status report under Section 22.
50. 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.
51. I have decided to apply Section 22 of the FOI Act to delete irrelevant material in respect of the above documents, in order to facilitate the release of the remainder of those documents, as set out in Schedule 1.

Your rights of review

52. 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).
53. 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

54. 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.

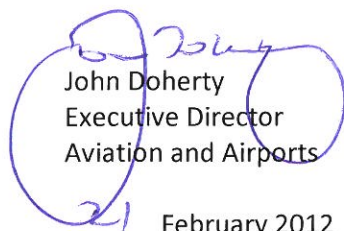
55. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information 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.
56. 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

57. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7531 or email FOI@infrastructure.gov.au

Yours sincerely,



John Doherty
Executive Director
Aviation and Airports

21 February 2012



Australian Government
Department of Infrastructure and Transport

Schedule of documents

Applicant:

Decision date: 21 February 2012

FOI reference number: 12-45

Documents: Documents concerning NASAG Minutes and meetings from 28 September 2011 to the date of the FOI request
 8 December 2011

Document reference (FOI 12-45 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
1	16.11.11	1	10/14643	Department of Infrastructure and Transport	NASAG Members	Draft Agenda	Release in full	
2	16.11.11	1	10/14643	Department of Infrastructure and Transport	NASAG Members	Draft Agenda - final	Release in full	
3	16.11.11	8	10/14643	Department of Infrastructure and Transport	NASAG Members	Draft Record of Meeting Minutes	Release with deletions	Irrelevant material s.47B s.47C

Document reference (FOI 12-45 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
4	16.11.11	8	10/14643	Department of Infrastructure and Transport	NASAG Members	Draft Record of Meeting Minutes	Release with deletions	Irrelevant material s.47B s.47C
5	16.11.11	9	10/14643	Department of Infrastructure and Transport	NASAG Members	Draft Record of Meeting Minutes	Release with deletions	Irrelevant material s.47B s.47C
6	November 2011	2	10/14643	Department of Infrastructure and Transport	NASAG Members	Action Items – Status Report	Release with deletions	Irrelevant material s.47B s.47C
7	23.09.11	1	10/14643	Department of Infrastructure and Transport	TISOC Members	Agenda Item No 7	Release in full	
8	Undated	6	Email server	Department of Infrastructure and Transport	NASAG Members	Draft brief NASAG 6.2	Exempt in full	s.47B s.47C
9	Undated	3	10/14643	Department of Infrastructure and Transport	NASAG Members	NASAG 6.2 Attachment B	Exempt in full	Irrelevant material s.47B s.47C
10	Undated	5	10/14643	Department of Infrastructure and Transport	NASAG Members	NASAG 7.4 Paper	Release in full	

Document reference (FOI 12-45 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
11	16.11.11	3	Email server	Department of Infrastructure and Transport	NASAG Members	Action Items – Status Report	Release with deletions	s.47B s.47C
12	16.11.11	6	Email server	Department of Infrastructure and Transport	NASAG Members	Draft Record of Meeting Minutes	Release with deletions	s.47B s.47C
13	8.11.11	1	Email server	Department of Infrastructure and Transport	NASAG Members	Email	Release in full	
14	5.10.11	1	Email server	Department of Infrastructure and Transport	NASAG Members	Email	Release in full	
15	1.12.11	3	Email server	Department of Infrastructure and Transport	NASAG Members	Email and map attachments	Exempt in full	s.47C s.47G
16	29.11.11	13	Email server	Department of Infrastructure and Transport	NASAG Members	Email and map attachments	Exempt in full	s.47C s.47G
17	Undated	7	Email server	Department of Infrastructure and Transport	NASAG Members	Draft NASAG briefing paper	Exempt in full	Irrelevant material s.47B s.47C
18	Undated	4	Email server	Department of Infrastructure and Transport	NASAG Members	Draft NASAG briefing paper attachment A	Exempt in full	Irrelevant material s.47B s.47C

Document reference (FOI 12-45 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
19	Undated	7	Email server	Department of Infrastructure and Transport	NASAG Members	Draft brief NASAG 6.2	Exempt in full	Irrelevant material s.47B s.47C
20	Undated	7	Email server	Department of Infrastructure and Transport	NASAG Members	Draft brief NASAG 6.2	Exempt in full	Irrelevant materials.47B s.47C
21	Undated	4	Email server	Department of Infrastructure and Transport	NASAG Members	Draft NASAG briefing paper attachment A	Exempt in full	Irrelevant material s.47B 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.
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

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).

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.



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: 28 March 2012

FOI reference number: 12-54

Documents: Documents concerning NASAG Minutes and meetings from 8 December 2011 to 20 January 2012

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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 20 January 2012 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) *Draft agendas, agendas, draft minutes, minutes, draft records of meetings and records of meeting for each meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 8 December 2011;*
 - ii) *Documents prepared for the purpose of being presented, tabled or otherwise considered at a meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 8 December 2011; and*
 - iii) *Correspondence, submissions or other representations (or records thereof) to or on behalf of NASAG created or received since 8 December 2011.*
4. On 20 February 2012 the Department provided you with an estimate of charges in the amount of \$456.85.
5. On 2 March 2012 you agreed to pay the charge and paid \$456.85.

Decision

6. I have identified 21 documents in the possession of the Department that fall within scope of your FOI request. Please note that one document (document 19) was released to you as part of a previous FOI request (FOI 11-73- document 2) and will not be considered further.
7. I have decided to release two (2) documents in full.
8. I have decided to refuse access to 18 documents as I am satisfied that these documents are exempt documents pursuant to sections 47B and 47C of the FOI Act.

Documents subject to this request

9. The Department has undertaken a search of its records and has identified all the documents that fall within the scope of your request.
10. The documents subject to your request are listed in the schedule of documents at Schedule 1.

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 and 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 concerning Commonwealth and State relations (Section 47B); and
 - Deliberative process documents (Section 47C).

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

Statement of reasons

Commonwealth – State relations

Documents - 3,4,5,6,7,8,9,10,11,12,13,14,17,18,20 and 21

13. I have decided to exempt documents 3,4,5,6,7,8,9,10,11,12,13,14,17,18,20 and 21 in their entirety.
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 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)).
15. For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).
16. Documents 3,4,5,6,7,8,9,10,11,12,13,14,17,18,20 and 21 are draft internal documents which include various opinions, options and discussions regarding national land use planning near airports and flight paths. The documents in issue are committee working drafts that contain discussions and input from various committee members. The options, opinions and discussions contained within these documents had not been finalised at the time within the NASAG committee. Current iterations of most of the documents have now been made publicly available (on the Department of Infrastructure and Transport's website). I consider that it would have a negative impact on the relationship between the Commonwealth and the State and Territory governments which comprise NASAG if the working drafts use in developing those documents were released. 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;
 - undermine the effective working of the committee;
 - adversely affect the level of trust and cooperation that is present in existing relationships between the Commonwealth and State stakeholders ;
 - create difficulty in ongoing discussions between NASAG members pertaining to the development of joint policies; and

- adversely affect ongoing negotiations between the Commonwealth and the States.
17. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to these 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; and
 - (b) inform debate on a matter of public importance.
 19. 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.
 20. 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. I have weighed the factors for and against disclosure 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 meetings and negotiations with NASAG. Secondly, I am satisfied that any harm to the Commonwealth and States 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.

Deliberative process documents

Documents 1,2,3,4,5,6,7,8,9,10,11,12,13,14,17,18,20 and 21

22. Section 47C(1) provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been prepared, recorded or obtained which are relevant to the functions of the Department. Deliberative process documents involve the exercise of judgment in developing and making a selection from different options, opinions etc. It refers to a process of reflection upon the wisdom and expediency of a particular course of action. The exempt documents involve communications which are considered deliberative processes relevant to the functions of the Department.
23. After coming to the conclusion that the documents are 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.
24. 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

25. 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 documents will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of planning guidance for noise sensitive developments near airports. These documents were prepared for the deliberative purposes of the Department, insofar as they contain opinions, advice or recommendations that were in preliminary in nature and had not been considered by senior officials or relevant Ministers at that time. The documents are not representative of the final agreement yet to be reached between the Commonwealth and other State NASAG members. Therefore, the opinions contained within the documents may not provide any sound bases for public debate, additional to that which is already publicly available.
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.
27. 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 and ongoing policy development. The deliberations contained within documents had not been fully considered or finalised and the premature release of this information may inhibit the flow of information in the future as well as potentially undermining the cooperative and working partnerships between the Department and external NASAG stakeholders.
28. The deliberative material disclosed in the documents may, by implication, result in the flow of information to the Commonwealth being impeded. The documents are working documents and reflect preliminary opinions, which may have changed as the deliberations progressed. There is an expectation that NASAG members would be able to engage frankly in the discussion without being held to views expressed as the thinking develops. A concern about the publication of initial views may limit the full and frank supply of information to the Commonwealth in the future.
29. Finally, I have weighed the factors to determine where the public interest lies. I have decided that access to documents 1,2,3,4,5,6,7,8,9,10,11,12,13,14,17,18,20 and 21 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 OIAC 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. 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](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

Contacts

34. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email FOI@infrastructure.gov.au



John Doherty
Executive Director
Aviation and Airports

28 March 2012



Australian Government

Department of Infrastructure and Transport

Schedule of documents (from Decision maker)

Applicant:

Decision date: 28 March 2012

FOI reference number: 12-54

Documents: Documents relating to NASAG meetings

Document reference (FOI 12-54 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
Doc 1		4		Standing Council on Transport and Infrastructure	N/A	National Airport Safeguarding Framework Agenda Paper (SCOTI 12)	Exempt	s 47C
Doc 2		1		Transport and Infrastructure Senior Officials' Committee	N/A	National Airport Safeguarding Framework Agenda Paper (TISOC 12)	Exempt	s 47C
Doc 3		3		Department of Infrastructure and Transport		Draft - Guideline for mitigating against noise disturbance from airports	Exempt	s 47B and 47C
Doc 4		7		Department of Infrastructure and Transport		Draft - Principles for a National Airports Safeguarding Framework	Exempt	s 47B and 47C
Doc 5	10/01/2012	5		Department of Infrastructure and Transport		Draft - Guideline for managing impacts of noise disturbance from airports	Exempt	s 47B and 47C
Doc 6	13/01/2012	5		Department of		Draft - Guideline for	Exempt	s 47B and

Document reference (FOI 12-54 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
				Infrastructure and Transport		managing impacts of noise disturbance from airports		47C
Doc 7	16/01/2012	5		Department of Infrastructure and Transport		Draft – Guideline for managing impacts of noise disturbance from airports	Exempt	s 47B and 47C
Doc 8		3		Department of Infrastructure and Transport		Draft - National airports safeguarding plan	Exempt	s 47B and 47C
Doc 9	16/01/2012	8		Department of Infrastructure and Transport		Draft – Principles for a national airports safeguarding framework	Exempt	s 47B and 47C
Doc 10	18/01/2012	5		Department of Infrastructure and Transport		Draft – Guideline for managing impacts of noise disturbance from airports	Exempt	s 47B and 47C
Doc 11	18/01/2012	5		Department of Infrastructure and Transport		Draft – Guideline for managing impacts of noise disturbance from airports	Exempt	s 47B and 47C
Doc 12	16/01/2012	7		Department of Infrastructure and Transport		Draft - Principles for a national airports safeguarding framework	Exempt	s 47B and 47C
Doc 13		3		Department of Infrastructure and Transport		Draft - National airports safeguarding plan	Exempt	s 47B and 47C
Doc 14	20/01/2012	7		Department of Infrastructure and Transport		Draft – principles for a national airports safeguarding framework	Exempt	s 47B and 47C
Doc 15		1		Department of Infrastructure and Transport		NASAG – Draft agenda 8 th Meeting	Release in Full	
Doc 16	20/12/11	1		Nicole Talbot	NASAG members	Email to NASAG members – “NASAG update”	Release in Full	
Doc 17		6		Department of Infrastructure and Transport		Draft – Principles for a national airports safeguarding framework	Exempt	s 47B and 47C

Document reference (FOI 12-54 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
Doc 18		5		Department of Infrastructure and Transport		Draft – Guidelines for development in the vicinity of airports	Exempt	s 47B and 47C
Doc 19		7		Department of Infrastructure and Transport		Alternative aircraft noise metrics	Previously released (FOI11-73 doc 2)	
Doc 20		6		Department of Infrastructure and Transport		Draft – Guideline for managing impacts of noise disturbance from airports	Exempt	s 47B and 47C
Doc 21	16/01/2012	7		Department of Infrastructure and Transport		Draft – Principles for a national airports safeguarding framework	Exempt	s 47B and 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).

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: 17 February 2012

FOI reference number: 12-56

Documents: A briefing paper that accompanied the letter to the Hon Brad Hazzard MP

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Summary

1. I refer to your letter dated 25 January 2012 in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to a briefing paper that accompanied the letter to the Hon Brad Hazzard MP.

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.

Background

3. On 25 January 2012 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:

'A briefing paper that accompanied the letter to the Hon Brad Hazzard MP'

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:
 - A briefing paper that accompanied the letter to the Hon Brad Hazzard MP

Decision

5. I have made a decision not to release any documents subject to your request.

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 not to grant access to documents follow.
7. 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:
 - Section 47C, deliberative processes

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

Deliberative process documents

Document 1

8. I have decided that the document is an exempt document under section 47C and is exempt in full.
9. Section 47C(1) provides an exemption for documents which disclose deliberative matters and processes, which is conditional upon an assessment of the public interest in releasing material.
10. A deliberative document is one which would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained or prepared, 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 an agency, a Minister or the Government of the Commonwealth.

11. A deliberative process involves the exercise of judgment in developing and making a selection from different options and requires a process of reflection as to the judiciousness of a course of action. The exempt document involves communications which are considered to be deliberative processes relevant to the functions of the Department. The document contains deliberative matter, insofar as it contains opinions, advice or recommendations. The briefing paper is a working document which canvasses options (Section 47C(1)).
12. After coming to the conclusion that the document 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, be contrary to the public interest.
13. 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.
14. I have considered these factors, and agree that the objects of the FOI Act should be promoted. However, I am not satisfied that the release of the document will significantly inform debate on a matter of public importance. The document 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. Therefore, the information contained within the document may not provide any sound basis for public debate, in addition to that which is already publicly available.
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.
16. 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 the document considered by the Minister and the 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 the Minister.
17. The deliberative material disclosed in the document may, by implication, result in the flow of information to the Commonwealth Government being impeded and may inhibit the full canvassing of issues. The document may be misconstrued and cause doubt about the Government's ability to manage its functions. There is an expectation that the supply of information may cease or be limited based on this doubt.
18. 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 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 factors in favour of access.

Your rights of review

19. 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).
20. 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

21. 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.

You do not need to seek an internal review from the Department before seeking 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](http://www.oaic.gov.au/publications/FOI%20fact%20sheet%20your%20review%20rights.html).


John Doherty
Executive Director, Aviation and Airports
17 February 2012



Australian Government

Department of Infrastructure and Transport

FOI
Schedule 1

Schedule of documents

Applicant:

Decision date: February 2012

FOI reference number: 12-56

Documents: A briefing paper that accompanied the letter to the Hon Brad Hazzard MP

Document reference (FOI 12-56 reference)	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption provision
Doc 1	2 May 2011	2	Department of Infrastructure and Transport	Minister for Infrastructure and Transport	Briefing paper	Exempt in full	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).

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).



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: April 2012

FOI reference number: 12-62

Documents: *Documents evidencing communications between the Department and the Canberra Airport regarding ANEF systems in the land-use planning context*

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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 13 February 2012 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:

"All documents created or received after 1 December 2009 evidencing communications between the Department and the Canberra Airport (or any associate thereof) discussing the ANEF system in a land-use planning context and/or any alternative system."

4. On 23 February 2012 the Department provided you with an estimate of a charge of \$40.50.
5. On 1 March 2012 you agreed to pay the charge, and paid the amount in full.

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/s:
 - Document 1
 - Document 2

I have decided to refuse access to the following document/s:

 - Document 3

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 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 provision of the FOI Act relevant to my decision:
 - Section 47C (Deliberative processes)
11. A full extract of all provisions I used to make my decision are provided in Schedule 2.

Statement of reasons

Deliberative process documents

Document 3

12. Section 47C(1) provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been obtained, prepared or recorded and which are relevant to the functions of the Department.
13. After coming to the conclusion that the 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 document 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 FOI Act; and
 - (b) inform debate on a matter of public importance
15. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that the release of the document will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of planning guidance for noise sensitive developments near airports. The document, developed at the request of the Department, is comprised of the first iteration of new contour diagrams depicting aircraft noise forecasts for Canberra Airport. The contour diagrams produced in the first iteration were a preliminary draft and were found to contain an error which was corrected in later versions. The first iteration was not used to represent the aircraft noise forecasts for the airport. Final diagrams were provided by Canberra Airport and are included in Document 2 (released in full). Document 3 is not representative of the final position reached between the Commonwealth and Canberra Airport. Therefore, the opinions contained within the document will not provide any sound basis 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.
17. The options and opinions expressed within the document had not been fully discussed or finalised and the release of this information may inhibit the flow of information in the future as well as potentially undermining the cooperative and working partnerships between the Department and Canberra Airport.
18. The document is a working document and reflects preliminary opinions, options and recommendations, which may have changed as the deliberations progressed. There was an expectation that Canberra Airport would be able to engage frankly in discussions with the Commonwealth without being held to views expressed in a preliminary context. The publication of initial views may limit the full and frank supply of information to the Commonwealth in the future.
19. 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. 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

20. 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).
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 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.

Contacts

23. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email FOI@infrastructure.gov.au



John Doherty
Executive Director, Aviation and Airports
18 April 2012



Australian Government

Department of Infrastructure and Transport

FOI

Schedule 1

Schedule of documents

Applicant:

Decision date:

April 2012

FOI reference number:

12-62

Documents:

Documents evidencing communications between the Department and the Canberra Airport regarding ANEF systems in the land-use planning context

Document reference	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
Doc 1	October 2011	2	John Doherty	Mr Stephen Byron	Letter to Mr Byron re: airport safeguarding objectives	Release in Full	
Doc 2	19 October 2011	8	Canberra Airport	Scott Stone	Email with attached contours	Release in Full	
Doc 3	14 October 2011	8	Canberra Airport	Scott Stone	Email with draft attached contours	Exempt	Section 47C (deliberative)



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).

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 and reason for decision of
Stephen Borthwick, A/g Executive Director, Aviation and Airports**

Applicant:

Decision date: 4 May 2012

FOI reference number: 12-67

Documents: *Documents relating to NASAG meeting on 20 January 2012*

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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, Stephen Borthwick, 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 *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 9 March 2012 you made a request for access to documents in the possession of the Department. Your request sought access to:
 - i) *draft agendas, agendas, draft minutes, minutes, draft records of meetings and records of meeting for each meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 20 January 2012;*
 - ii) *documents prepared for the purpose of being presented, tabled or otherwise considered at a meeting of NASAG that has occurred, or is contemplated to occur, since or at any time after, 20 January 2012; and*
 - iii) *correspondence, submissions or other representations (or records thereof) to or on behalf of NASAG created or received since 20 January 2012.*
4. On 3 April 2012 the Department provided you with an estimate of a charge of \$343.21.
5. On 5 April 2012 you agreed to pay the charge, and paid the amount in full.

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 documents:
 - Documents 1, 2, 3, 5, 6, 11, 12, 13, 15 and 16I have decided to grant access to the following documents in part:
 - Documents 4, 14, 17, and 18I have decided to refuse access to the following documents:
 - Documents 7, 8, 9 and 10

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 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 provision of the FOI Act relevant to my decision:

- Section 47B (Commonwealth – State relations)
- Section 47C (Deliberative processes)

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

Statement of reasons

Deliberative process documents

Documents 7, 8, 9, 10, 14, 17 and 18

12. I have decided to exempt documents 7, 8, 9 and 10 in their entirety and parts of documents 14, 17 and 18 pursuant to section 47C(1) which provides a conditional exemption for documents disclosing deliberative processes. A deliberative process relates to documents that contain opinions, advice, deliberations, consultations or recommendations that have been obtained, prepared or recorded and which are relevant to the functions of the Department.

13. After coming to the conclusion that the 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 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 FOI Act; and
- (b) inform debate on a matter of public importance.

14. Whilst I have considered these factors, and agree that the objects of the FOI Act should be promoted, I am not satisfied that the release of the documents will significantly inform debate on a matter of public importance, nor have any effect on the effective oversight of planning guidance for noise sensitive developments near airports. The documents were prepared for the deliberative purposes of the Department in so far as they contain preliminary advice, recommendations and discussions which have not been fully considered by the Minister or senior officials. The documents are not fully representative of the final agreement yet to be reached between the Commonwealth and other NASAG members. I do not consider that these preliminary opinions and advice would provide any sound basis for public debate, additional to that which is already publically available.

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.

16. I am satisfied that the disclosure of the deliberations would, or could reasonably be expected to prejudice the management and functioning of a Government agreement and ongoing policy development. The documents contain deliberations and discussions which have not been fully considered or finalised and the premature release of these documents may inhibit the flow of similar information in the future as well as potentially undermining the cooperative working partnerships that currently exist between the Commonwealth and NASAG members.

17. The documents are working documents and reflect preliminary opinions, which may have changed as the deliberations progressed. There was an expectation that all parties including NASAG members would be able to engage frankly in discussions with the Commonwealth without being held to views expressed as the thought processes evolved and developed. Publication of initial views may limit the full and frank supply of information to the Commonwealth in the future.
18. 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. 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.

Commonwealth – State relations

Documents – 4, 7, 8, 9, 10, 17 and 18

19. I have decided to exempt documents 7, 8, 9 and 10 in their entirety and parts of documents 4, 17 and 18.
20. 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)).
21. For the purposes of this exemption, a State includes the Australian Capital Territory and the Northern Territory (Section 4(1)).
22. The documents are draft internal documents which include opinions, options and discussions regarding national land use planning near airports and flight paths. The documents comprise committee working papers that contain discussions and input from various committee members. The options, opinions and discussions contained within these documents had not been finalised within the NASAG committee at the time. Current iterations of most of the documents have now been made publicly available (on the Department's website). I consider that it would have a negative impact on the relationship between the Commonwealth and the State and Territory governments which comprise NASAG if the working drafts used in developing those final documents were released. 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;
 - undermine the effective working of the committee;
 - adversely affect the level of trust and cooperation that is present in existing relationships between the Commonwealth and State stakeholders ;
 - create difficulty in ongoing discussions between NASAG members pertaining to the development of joint policies; and
 - adversely affect ongoing negotiations between the Commonwealth and the States.
23. After coming to the conclusion that the documents are conditionally exempt in accordance with Section 47B, I considered the Public Interest Test (Section 11A(5)). I have considered whether access to these documents would, on balance, be contrary to the public interest.

24. 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.
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;
 - (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.
26. I have weighed the factors for and against disclosure 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 during meetings and negotiations with NASAG. Secondly, the 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. I am satisfied that any harm to the Commonwealth and States 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.

Your rights of review

27. 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).
28. 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
29. 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. 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.

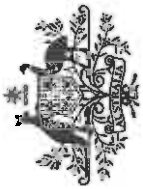
Contacts

30. If you wish to discuss this decision, please contact the Department's FOI Co-ordinator on (02) 6274 7844 or email FOI@infrastructure.gov.au



Stephen Borthwick
A/g Executive Director
Aviation and Airports

4 May 2012



Australian Government

Department of Infrastructure and Transport

FOI

Schedule 1

Schedule of documents

Applicant:

Decision date:

May 2012

FOI reference number:

12-67

Documents:

Documents relating to NASAG meetings from 20 January 2012

Document reference (FOI 12-54 reference)	Date of document	Pages	File Ref	Author	Recipient	Document description	Decision	Exemption Provision
Doc 1	24/01/2012	1		Nicole Tailbot	NASAG	Email of draft NASAG agenda	Release in full	
Doc 2	1/02/2012	1		Nicole Tailbot	NASAG	Agenda papers (Attachments not in scope of request)	Release in full	
Doc 3		1		Department of Infrastructure and Transport		NASAG Draft Agenda	Release in full	
Doc 4		9		Department of Infrastructure and Transport		NASAG Draft minutes	Release in part	Section 22 and 47B
Doc 5		2		Department of Infrastructure and Transport		NASAG meeting outcome action items	Release in full	
Doc 6		1		Transport and Infrastructure Senior Officials' Committee		National Airport Safeguarding Framework Agenda Paper (TISOC 12)	Release in full (consultation required)	

Doc 7		4		Standing Council on Transport and Infrastructure		National Airport Safeguarding Framework Agenda Paper (SCOTI 12)	Exempt in full	Section 22, 47B and 47C
Doc 8		33		Department of Infrastructure and Transport		National Airports Safeguarding Framework	Exempt in full	Section 22, 47B and 47C
Doc 9	02/02/2012	2		Scott Stone	NASAG	NASAG Meeting paper	Exempt in full	Section 47B and 47C
Doc 10		6		Department of Infrastructure and Transport		National Airports Safeguarding Framework- Managing Aircraft Noise	Exempt in full	Section 47B and 47C
Doc 11	03/02/2012	1		Nicole Talbot	NASAG	Email to NASAG (Attachments are exempt as per document 8)	Release in full	
Doc 12	07/02/2012	1		Nicole Talbot	NASAG	Email to NASAG (Attachment is exempt as per document 8)	Release in full	
Doc 13	09/02/2012	1		Nicole Talbot	NASAG	NASAG meeting follow up	Release in full	
Doc 14	15/02/2012	2		Nicole Talbot	NASAG	NASAG meeting follow up	Release in part	Section 47C
Doc 15		2		Andrew Wilson	Consultees	Example letter inviting consultation on Airports Safeguarding Framework	Release in full	
Doc 16	19/03/2012	1		Jacqueline Le	NASAG	Email about NASAG minutes and action items	Release in full	
Doc 17				Department of Infrastructure and Transport		NASAG Draft minutes	Release in part	Section 22, 47B and 47C
Doc 18	02/2012	2				NASAG Meeting - Draft outcome action items	Release in part	Section 22, 47B and 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).

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).