



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 May 2012

FOI reference number: 12-72

Documents: *Documents relating to the NASAG meeting held on 20 April 2012*

Contents

Summary	2
Authority to make this decision	2
Background	2
Documents subject to this request	2
Decision	2
Reasons for decision	2
Statement of Reasons	3
Your rights of review	4
Contacts	4
 Schedule 1: Schedule of documents	 5
Schedule 2: Schedule of relevant provisions in the <i>Freedom of Information Act 1982</i>	6

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 April 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 meeting and records of meeting for the meeting for the meeting of NASAG that occurred today 20 April 2012;*
 - ii) *Documents prepared for the purpose of being presented, tabled or otherwise considered at the meeting of NASAG that occurred today 20 April 2012; and*
 - iii) *The modified draft NASAG Safeguarding Airports Framework document discussed at that meeting*
4. On 4 May 2012 the Department provided you with an estimate of a charge of \$25.70.
5. On 9 May 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 six (6) 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 and 2

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

- Documents 3 and 4

I have decided to refuse access to the following documents:

- Documents 5 and 6

Reasons for decision

9. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to documents follow.

10. In making my decision, I had regard to Sections 3, 11 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

Commonwealth – State relations

Documents – 3, 4, 5 and 6

12. I have decided to exempt parts of documents 3 and 4 and documents 5 and 6 in their entirety pursuant to section 47B of the FOI Act.

13. Section 47B 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)).

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

15. The documents in issue are draft documents which include opinions, options and discussions regarding national land use planning near airports and flight paths. The documents include 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, nor had Ministers or Senior Officials considered the documents. 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 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.

16. 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.

17. 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
18. Secondly, I considered the following factors against disclosure, specifically, that disclosure could:
- (a) reasonably be expected to have a negative impact on Commonwealth-State relations;
 - (b) reasonably be expected to harm the interests of an individual or group of individuals;
 - (c) reasonably be expected to prejudice the management function of an agency;
 - (d) impair or prejudice the future flow of information to the Commonwealth; and
 - (e) adversely affect negotiations between the Commonwealth and the States.
19. 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.

Deliberative process documents
Documents 5 and 6

20. I have decided to exempt documents 5 and 6 in their entirety pursuant to subsection 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.
21. 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 documents would, on balance, be contrary to the public interest. Firstly, I considered the following factors favouring access, specifically, that disclosure would:
- (a) promote the objects of the FOI Act; and
 - (b) inform debate on a matter of public importance.
22. 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 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.

23. 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.
24. 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.
25. 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.
26. 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 factors favouring access are not an overriding considerations in this instance. I am 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

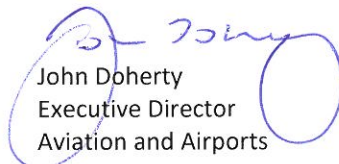
Sydney, NSW

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



John Doherty
Executive Director
Aviation and Airports

21 May 2012



Schedule of documents

Applicant:

Decision date: May 2012

FOI reference number: 12-72

Documents: *Documents relating to the NASAG meeting held on 20 April 2012*

Document reference	Date of document	Pages	Author	Recipient	Document description	Decision	Exemption Provision
Doc 1		1	Department of Infrastructure and Transport	NASAG	Draft Agenda	Release in full	NA
Doc 2		1	Department of Infrastructure and Transport	NASAG	Draft Agenda	Release in full	NA
Doc 3	08/02/2012	7	Department of Infrastructure and Transport	NASAG	Draft Minutes of 8 February NASAG meeting	Release in Part	Section 47B
Doc 4	02/2012	2	Department of Infrastructure and Transport	NASAG	Meeting outcome action items	Release in part	Section 47B
Doc 5	Undated	5	Department of Infrastructure and Transport		National Airports Safeguarding Framework - Measures for Managing Aircraft Noise	Exempt in full	Sections 47B and 47C
Doc 6	Undated	4	Department of Infrastructure and Transport		National Airports Safeguarding Framework - Measures for Managing Aircraft Noise	Exempt in full	Sections 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).



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: July 2012

FOI reference number: 12-79

Documents: Documents relating to the QANTAS restructure

Contents

Summary	2
Authority to make this decision	2
Background	2
Documents subject to this request	2
Decision	2
Reasons for decision	2
Statement of Reasons	3
Irrelevant material	4
Access to documents.....	4
Your rights of review	4
Contacts	5
 Schedule 1: Schedule of documents	 6
Schedule 2: Schedule of relevant provisions in the <i>Freedom of Information Act 1982</i>	9

Summary

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

Authority to make this decision

2. I, John Doherty, Executive Director, Aviation and Airports, am an officer authorised by the Secretary of the Department of Infrastructure and Transport (the Department) to make decisions about access to documents in the possession of the Department in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 24 May 2012 you made a request for access to documents in the possession of the Department. Your request sought access to:

documents within the meaning of the FOI Act whether in draft or final form that were created, received or sent by the Department of Infrastructure and Transport that reasonably relate to, consider, mention, analyse or discuss changes to the corporate structure of Qantas Airways Limited, or changes to the key personnel under the Qantas Air Operators Certificate. At this time we seek only such documents that have been created, received or modified since 1 January 2012.

4. On 8 June 2012, the Department provided you with an estimate of a charge of \$226.16.
5. On 13 June 2012, you agreed to pay the charge, and paid a deposit of \$56.54.

Documents subject to this request

6. The Department has undertaken a search of its records and has identified 20 documents that fall within the scope of your request, as set out above.
7. The documents subject to your request are listed in the schedule of documents at Schedule 1.

Decision

8. I have made a decision to release the documents subject to your request in part. I have decided to grant access in full to the following document:

- Document 1

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

- Documents 5, 6, 8, 9, 10, 14, 15, 18, 19 and 20

I have decided to refuse access to the following documents:

- Documents 2, 3, 4, 7, 11, 12, 13, 16, 17

Reasons for decision

9. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to documents follow.
10. In making my decision, I had regard to Sections 3, 11 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 45 (documents obtained in confidence)
- 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

Documents containing material obtained in confidence

Document 3

12. I have decided to exempt document 3 in its entirety pursuant to section 45 of the FOI Act. Section 45 provides that a document is exempt if its disclosure could found an action for breach of confidence. Document 3 was provided to the Department on the mutual understanding that it would remain confidential and not be circulated further. This expectation of confidentiality was made clear in the communication and its contents were not widely or publicly known. I am satisfied that the document was provided to the Department with the necessary quality and a mutual understanding of confidentiality. Further I am satisfied that if the document were to be released detriment or harm to the legitimate business operations of QANTAS would likely result.

Deliberative process documents

Documents 2, 4, 5, 7-9, 11-13, 16, 17, 18 and 19

13. I have decided to exempt documents 2, 4, 7, 11, 12, 13, 16, 17 in their entirety and parts of documents 5, 8, 9, 18 and 19 pursuant to subsection 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.
14. 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.
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 documents will significantly inform debate on a matter of public importance, further to that which is already available in the public domain.
16. The documents in issue contain preliminary opinions and discussions created for the deliberative purposes of the Department. These opinions, opinions and discussions had not been fully considered by senior officials at the time and are not fully representative of the final Departmental position. The effects of the QANTAS restructure and subsequent requirements or actions needed from the Department had not been fully explored. The discussions and opinions contained in these documents are preliminary and at times speculative in nature. I do not consider that these preliminary opinions and discussions would provide any sound basis for public debate, additional to that which is already publicly available.

17. 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.
18. I am satisfied that the disclosure of the documents would, or could reasonably be expected to prejudice the management and functioning of the working relationship that exists between the Department and QANTAS. The documents contain scenarios, opinions and discussions which had not been fully considered or explored and were based on limited information available to the Department. The deliberative material disclosed in the documents may, by implication, result in the flow of information to the Commonwealth being impeded in the future. Further, the release of the documents could potentially undermine the cooperative working partnership that currently exists between the Commonwealth and QANTAS through a reduction in trust and confidence.
19. 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 regulatory and policy 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.

Irrelevant material

20. I have exempted parts of documents 5, 6, 8, 10, 14, 15, 18, 19 and 20 under Section 22 of the FOI Act.
21. 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.
22. 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.

Access to Documents

23. On 8 June 2011 the Department provided you with a notice of your liability to pay a charge, and a preliminary estimate in the amount of \$226.16. As you have paid a deposit of \$56.54, you are therefore liable to pay \$169.62 to gain access to the documents subject to this decision. Once we have received payment of the outstanding amount we will provide you access to the documents.

Your rights of review

24. 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).
25. 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

26. 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](http://www.oaic.gov.au/publications/FOI_fact_sheet12_your_review_rights.html).

Contacts

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



John Doherty
Executive Director
Aviation and Airports
5 July 2012



Australian Government
Department of Infrastructure and Transport

FOI
Schedule 1

Schedule of documents

Applicant:

Decision date: July 2012

FOI reference number: 12-79

Documents: Documents relating to the QANTAS restructure

Document reference (FOI 12-79)	Date of document	Author	Recipient	Document description	Decision	Exemption Provision
1	21/05/12	Mike Mirdak	Various	Email re QANTAS	Release	
2	21/05/12	Stephen Borthwick	Various	Email chain re QANTAS	Exempt	Section 47C
3	22/05/12	Olivia Wirth	Department of Infrastructure and Transport	Email	Exempt	Section 45
4	22/05/12	Mike Mirdak	Jamie Lovell	Email re: QANTAS	Exempt	Section 47C
5	22/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email with QANTAS restructure PPQ attached	Release in part	Section 47C and section 22
6	22/05/12	Stephen Borthwick	Various	Email re: QF talking points	Release in part	Section 22
7	22/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email re: QF talking points	Exempt	Section 47C
8	22/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email re: New PPQ	Release in part	Section 22

9	22/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Email re: QANTAS restructure PPQ and attachment	Release in part	Section 47C and section 22
10	22/05/12	Department of Education, Employment and Workplace Relations	Department of Infrastructure and Transport	Email re: QANTAS group: New Airlines Structure, Executive team media release	Release in part	Section 22
11	22/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport	Emails re: QANTAS restructure	Exempt	Section 47C
12	22/05/12	Department of Infrastructure and Transport	Department of Education, Employment and Workplace Relations	Email exchange re: QANTAS restructure	Exempt	Section 47C
13	22/05/12	Department of Infrastructure and Transport	Department of the Treasury	Email exchange re: QANTAS restructure	Exempt	Section 47C
14	22/05/12	Steve Jackson - QANTAS	Department of Infrastructure and Transport	Email exchange re: Changes to QANTAS group organisation	Release in part	Section 22
15	23/05/12	Bruce Buchanan - Jetstar	Department of Infrastructure and Transport	Email	Release in part	Section 22
16	23/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport (John Doherty)	Email - QANTAS restructure	Exempt	Section 47C
17	23/05/12	Department of Infrastructure and Transport	QANTAS	Email re: QF restructure	Exempt	Section 47C
18	23/05/12	Department of Infrastructure and Transport	Department of Infrastructure and Transport - Mike Mrdak and Andrew Wilson -	Email with attachments re: QF Restructure	Release in part	Section 47C and section 22
19	23/05/12	Department of Infrastructure and Transport	Department of the Treasury	Email re: Briefing	Release in part	Sections 47C and section 22

20	24/05/12	Aviation Business	Department of Infrastructure and Transport - John Doherty -	Email re: Media article regarding QANTAS restructure	Release in part	Section 22
----	----------	-------------------	-------------------------------------------------------------	------------------------------------------------------	-----------------	------------



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. Deletion of exempt matter

- (1) Where -

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;
- (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy would not be an exempt document and would not, by reason of the deletions, be misleading; and
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy, the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

- (2) Where access is granted to a copy of a document in accordance with sub-section (1) -

- (a) the applicant shall be informed that it is such a copy and also informed of the provision of this Act by virtue of which any matter deleted is exempt matter; and
- (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him 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).

45 Documents containing material obtained in confidence

A document is an exempt document if its disclosure under this Act would constitute a breach of confidence

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).