



14 January 2019

**In reply please quote:**

FOI Request: FA 18/11/01241 - File Number: ADF2018/233090

FOI Request: FA 18/11/01259 - File Number: ADF2018/233276

Dear [REDACTED]

**Freedom of Information (FOI) request - Access Decision**

On 23 November 2018, the Department of Home Affairs (the Department) received two requests for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You requested access to the following documents:

*All meeting minutes from the Interdepartmental Committee tasked with co-ordinating asbestos policy from September 2016 to the present, including any tabled documents or appendices to the minutes.*

and

*The final review into changes to penalties for the unlawful import/export of asbestos.*

**2 Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

#### **4 Documents in scope of request**

The Department has identified 24 documents as falling within the scope of your request FA 18/11/01241. These documents were in the possession of the Department on 23 November 2018 when your request was received.

In addition, the document that is relevant to request FA 18/11/01259 is captured in that bundle of relevant documents, and is document numbered 19 in that bundle. As such, this decision is in respect of both of the above referenced requests.

**Attachment A** is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

#### **5 Decision**

The decision in relation to the documents in the possession of the Department which fall within the scope of your two requests is as follows:

- Release relevant information in 23 documents in full
- Release one document in part with deletions

#### **6 Reasons for Decision**

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

##### **6.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 26 November 2018, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of documents marked 's22(1)(a)(ii)' would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

## 6.2 Section 38 – Documents to which secrecy provisions of enactments apply

Section 38 of the FOI Act provides that a document is an exempt document if disclosure of the document, or information contained in the document, is prohibited under a position of an enactment.

Section 271 of the Work Health and Safe Act 2012 (South Australia) (WHS Act SA) provides that:

### *Section 271 of the WHS Act—Confidentiality of information*

- (1) *This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (other than under [Part 7](#)).*
- (2) *The person must not do any of the following:*
  - (a) *disclose to anyone else—*
    - (i) *the information; or*
    - (ii) *the contents of or information contained in the document;*
  - (b) *give access to the document to anyone else;*
  - (c) *use the information or document for any purpose...*
- (3) *[Subsection \(2\)](#) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—*
  - (a) *about a person, with the person's consent; or*
  - (b) *that is necessary for the exercise of a power or function under the Act;*

The information marked 's38' in document 2 is subject to section 271 of the WHS Act (SA).

As such, I have decided that this information is exempt from disclosure under section 38 of the FOI Act.

## 6.3 Section 47G of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I am satisfied that part of document 2 contains information concerning the business, commercial or financial affairs of an organization.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) The extent to which the information is well known;
- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Department considers relevant.



The information contained within these documents is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources, such as the organisation's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

I have decided that the parts of document 2 are conditionally exempt under section 47G of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

#### **6.4 The public interest – section 11A of the FOI Act**

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.



I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- 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.

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **8 Your Review Rights**

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

OR By email to: [foi.reviews@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au)

By mail to:  
Freedom of Information Section  
Department of Home Affairs  
PO Box 25  
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

**9 Making a Complaint**

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

**10 Contacting the FOI Section**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).



**Authorised Decision Maker  
Department of Home Affairs**

*16 - January - 2019*

## ATTACHMENT A

### SCHEDULE OF DOCUMENTS REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*

FOI request: FA 18/11/01241

|     | Date of document | No. of pages | Description  | Decision on access                                    |
|-----|------------------|--------------|--|---|
| 1.  | 21/09/2016       | 8            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 2.  | 24/10/2016       | 8            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Release in part<br>22(1)(a)(ii)<br>47G<br>38          |
| 3.  | 15/12/2016       | 8            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 4.  | 09/03/2017       | 8            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 5.  | 28/6/2018        | 7            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 6.  | 19/7/2017        | 1            | Asbestos IDC – Forward Work Plan/Activity 2: Actions Arising from the 28 June meeting        | Relevant information released in full<br>22(1)(a)(ii) |
| 7.  | 22/08/2017       | 4            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 8.  | 27/9/2017        | 9            | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 9.  | 11/12/2017       | 10           | Asbestos Interdepartmental Committee (IDC) Meeting Minutes                                   | Relevant information released in full<br>22(1)(a)(ii) |
| 10. | 12/12/2016       | 9            | Asbestos Interdepartmental Committee (IDC) – Terms of Reference (ToR)                        | Release in full                                       |
| 11. | 15/12/2016       | 9            | Asbestos Policy and Regulation Interdepartmental Committee (IDC) Stakeholder Engagement Plan | Release in full                                       |
| 12. | 09/03/2017       | 5            | Asbestos Policy and Regulation Interdepartmental Committee (IDC) Forward Work Plan           | Release in full                                       |
| 13. | 14/06/2017       | 1            | Agenda – Seminar - Raising Awareness about the Risk of Imported Products containing Asbestos | Release in full                                       |
| 14. | 26/06/2017       | 11           | Report to the Commonwealth Asbestos IDC Testing and Inspection Infrastructure                | Release in full                                       |



|     | Date of document | No. of pages | Description  | Decision on access                                    |
|-----|------------------|--------------|--|---|
| 15. | 28/06/2017       | 11           | Presentation to Asbestos IDC   | Relevant information released in full<br>22(1)(a)(ii) |
| 16. | 24/10/2017       | 24           | Can THz detect Asbestos  | Release in full                                       |
| 17. | Nov 2017         | 106          | The Senate – Economics References Committee – Non-conforming building products – Interim report: protecting Australian from the threat of asbestos | Release in full                                       |
| 18. | 12/12/2017       | 2            | Department of Employment Tasking of Interim Report Recommendations 12/12/2018 - Senate inquiry - Interim Report - Asbestos                         | Release in full                                       |
| 19. | Jan 2018         | 11           | Discussion Paper: Offences and Penalties for the Unlawful Importation /Exportation of Asbestos   | Release in full                                       |
| 20. | Sep 2018         | 5            | Asbestos Interdepartmental Committee (IDC) Forward Work Plan   | Release in full                                       |
| 21. | 10/09/2018       | 7            | Asbestos Interdepartmental Committee (IDC) Stakeholder Engagement Plan   | Release in full                                       |
| 22. | 10/09/2018       | 2            | Asbestos Interdepartmental Committee (IDC) – Terms of Reference (ToR)  | Release in full                                       |
| 23. | Sep 2018         | 6            | Asbestos IDC: Stocktake on activities in the Forward Work Plan September 2018  | Release in full                                       |
| 24. | Undated          | 2            | Australian Government: Talking Points about Asbestos for Interdepartmental Committee Members   | Release in full                                       |