



1 April 2019

**In reply please quote:**

FOI Request: FA 18/12/00015

File Number: ADF2018/23758

Dear [REDACTED]

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

On 30 November 2018, the Department of Home Affairs (the Department) received a request 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 have requested access to the following documents:

*The Deloitte Touche Tohmatsu report arising from the Australian Electoral Maturity review, as listed with CN3550609.*

On 6 December 2018, you agreed to limit the scope of your request to the following documents:

- 1) *Whole of Nation report; and*
- 2) *Queensland report.*

**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;
- the Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines);
- consultation responses from third parties consulted in accordance with the FOI Act; and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

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

The Department has identified two documents as falling within the scope of your request. These documents were in the possession of the Department on 30 November 2018 when your request was received.

#### **5 Decision**

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

- exempt the Queensland report in full from disclosure; and
- release the Whole of Nation report in part with redactions.

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

My findings of fact and reasons for deciding that exemption provisions apply to the Queensland report in full and parts of the Whole of Nation report are set out below.

##### **6.1 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations**

Section 33(a)(i) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to, cause damage to the security of the Commonwealth.

For the reasons set out below, I consider section 33(a)(i) applies because there are real and substantial grounds for expecting that the disclosure of the Queensland report in its entirety and parts of the Whole of Nation report would cause damage to the security of the Commonwealth.

‘Security’ is a concept with a fluctuating content which can depend upon the circumstances as they exist from time to time. ‘Security of the Commonwealth’ is defined in section 4(5) of the FOI Act as follows:

(5) *Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:*

- (a) *matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth.*

I also consider that the definition of 'security' in the *Australian Security and Intelligence Organisation Act 1979* is relevant. That Act defines 'security' as:

(a) *The protection of, and of the people of, the Commonwealth and the several States and Territories from:*

- (i) *Espionage*
- (ii) *Sabotage*
- (iii) *Politically motivated violence*
- (iv) *Promotion of communal violence*
- (v) *Attacks on Australia's defence system; or*
- (vi) *Acts of foreign interference;*

*Whether directed from, or committed within, Australia or not; and*

(aa) *the protection of Australia's territorial and border integrity from serious threats; and*

(b) *The carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).*

I am satisfied that:

- Cyber security is essential to protect the legitimacy of electoral processes and any organisation involved in the electoral process must implement cyber security practices. The documents requested contain information that, if disclosed, would undermine the cyber security of electoral commissions, and Australia's national security.
- Both reports evaluate the strengths and weaknesses in jurisdictions' electoral commission's cyber security considerations, protocols and procedures that underpin free and fair Australian elections. The reports also recommend new cyber security procedures and protocol adjustments.
- Precise cyber security practices of electoral organisations – and their relative strengths and weaknesses – must remain confidential to be effective. If these processes and their implementation become public, malicious actors "*within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth*" could use this information to undermine security of the Commonwealth.

As such I have decided that parts of the Whole of Nation report and the entire Queensland report are exempt from disclosure under section 33(a)(i) of the FOI Act.

## **6.2 Section 47B of the FOI Act – Commonwealth-State relations**

Section 47B of the FOI Act provides that a document is conditionally exempt if disclosure:

- (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.



I am satisfied that the disclosure of the Queensland report would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State. I am also satisfied that disclosure would divulge information communicated in confidence by or on behalf of an authority of a State to a person receiving the communication on behalf of an authority of the Commonwealth.

In making my decision I have had regard to submissions received from an affected third party.

I am satisfied that:

#### ***6.2.1 Damage to relations between the Commonwealth and a State***

- The release of the report could reasonably be expected to damage the working relations between the State of Queensland (Electoral Commission of Queensland or 'third party') and a number of Commonwealth agencies, including the Australian Electoral Commission, Australian Signals Directorate and the Australian Cyber Security Centre (partner agencies) whose good relations are essential to deliver cyber security for electoral services.
- Through the course of business, these agencies share confidential and sensitive information on the basis of that information remaining protected. The ongoing working relations between these agencies that partner to maintain and improve the cyber security of electoral processes rely on agencies having confidence in each other's ability to protect the confidentiality of that information.
- Whilst these partner agencies are open with each other in regards to cyber security maturity, the disclosure information shared in confidence with the expectation of confidentiality could reasonably be expected to undermine confidence of the partner agencies in each other and their ongoing cooperation.
- The undermining of these partnerships would, in turn, damage the relationship, the consequences of which would include:
  - impeding the flow of information between the partner agencies,
  - prejudicing partner agencies' ability to obtain confidential information now or in the future, and
  - prejudicing the partner agencies' management functions.
- Undermining the confidence between these parties would result in:
  - prejudicing the affected third party's cyber security outcomes,
  - prejudicing the affected third party's ability to obtain confidential information now, or in the future,
  - impeding the flow of information to the affected third party as a regulatory agency,
  - prejudicing the affected third party's management function, and
  - prejudicing the effectiveness of relevant testing procedures.

#### ***6.2.2 Divulging information or matter communicated in confidence***

- The Queensland report was produced with the input of the Queensland Electoral Commission's (the third party) officers to a commercial party commissioned by the Commonwealth. The Executive Summary of the Queensland report explicitly refers to the fact that the report is confidential to the third party.



- The third party's input into the report was predicated on the basis that it would be wholly and entirely confidential to the commissioning parties and not made available for public release.

As such, I have decided that the Queensland Report in its entirety is conditionally exempt under section 47B 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 parts of both documents contain information concerning the business, commercial or financial affairs of an organisation.

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.

In making my decision I have had regard to submissions received from an affected third party. I am 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 both documents referred to above 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 now turn 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 Section 11A of the FOI Act – the public interest**

I have decided that the entirety of the Queensland report and parts of the Whole of Nation Report are conditionally exempt. I am 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.

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; and
- (d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that my decision to exempt the Queensland report in full and release the Whole of Nation report in part with redactions promotes the objects of the FOI Act.
- I consider that sharing parts of the Whole of Nation report and exempting the Queensland report is the appropriate balance between protecting national security interests whilst also supporting the spirit of the FOI Act to inform public debate.
- 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 47B of the FOI Act could reasonably be expected to prejudice the Department's ability to obtain confidential information and to obtain similar information in the future.
- Protecting Australian government IT systems from cyber threats requires strong, ongoing collaboration between all relevant agencies. Any disclosure that would damage relations with any State and its Commonwealth agency partners would prejudice Australia's ability to protect the cyber security of jurisdictions' electoral commissions from these significant threats to national security. I consider that this would be contrary to the public interest and that this factor weighs heavily against disclosure.
- 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 private sector 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; and
- (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:

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

OR

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**