



**Australian Government**

**Department of Regional Australia,  
Regional Development and Local Government**

FOI

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

Decision and reason for decision of  
Sally Basser, First Assistant Secretary, Office for the Arts Division

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<b>Applicant:</b>	<b>Michael McKinnon</b>
<b>Decision date:</b>	<b>21 March 2012</b>
<b>FOI reference number:</b>	<b>11-33</b>
<b>Documents:</b>	<b>The consultancy report supplied by AEA Consulting entitled Review of the National Gallery of Australia, contract number 407516 which commenced 17/06/2011</b>

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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, Sally Basser, First Assistant Secretary, Office for the Arts Division, am an officer authorised by the Secretary of the Department of Regional Australia, Regional Development, Local Government, Arts and Sports (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 19 July 2011 you made a request for access to documents in the possession of the Department of Regional Australia, Regional Development, Local Government, Arts and Sports (the Department). Your request sought access to a:

*"the consultancy report supplied by AEA Consulting entitled review of the National Gallery of Australia, contract number 407516 which commenced 17/06/2011"*

## Documents subject to this request

4. The Department has undertaken a search of its records and has identified all documents that fall within the scope of your request, as set out above.
5. The document subject to your request is:
  - The consultancy report supplied by AEA Consulting entitled Review of the National Gallery of Australia, contract number 407516 which commenced 17/06/2011.

## Decision

6. I have made a decision to release the document subject to your request in part.
7. In accordance with Section 22(2) of the FOI Act, I have decided to provide access to an edited copy, modified by the following deletions to the document:
  - Some text in the index and body of the report has been redacted as it contains material that is exempt under Section 47C of the FOI Act 1982.

## Reasons for decision

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

Section 47C – Deliberative processes (public interest conditional)

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

### **Deliberative Matter**

14. Section 47C(1) of the FOI Act provides that a document may be conditionally exempt if it includes deliberative matter. To be satisfied that the information within this document is deliberative matter the content of the information must be in the nature of, or relating to either:
  - an opinion, advice or recommendation that has been obtained, prepared or recorded
  - a consultation or deliberation that has taken place
  - in the course of, or for the purposes of, a deliberative process of the agency or minister.
15. Some information within the body of the report contains deliberative matter made up of opinion and recommendations prepared by AEA Consulting regarding National Art Gallery of Australia . Based on this, I am confident that the information within the document is 'deliberative' for the purposes of the FOI Act and therefore is conditionally exempt.
16. Section 11A(5) provides that an agency 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 would, on balance, be contrary to the public interest.
17. In order to assess whether release of the exempt material would be contrary to the public interest, I considered the following factors which favour disclosure:
  - (a) Promote the objectives of the Act.
  - (b) Inform debate on a matter of public importance.
  - (c) That release would possibly improve relations between the Commonwealth and Norfolk Island.
18. I also considered the following factor which does not favour disclosure.

The confidential nature of the deliberative matter within the requested document if released would have an impact on the National Australia Gallery's ability to negotiate for future exhibitions.
19. On balance, disclosure of the report in full could reasonably be expected to prejudice an agency's ability to obtain similar information in the future. I considered that the public interest against disclosure to be more persuasive than the public interest factors favouring disclosure.

### **Assessment of actual charges**

20. I made a decision not to impose any charges in relation to this request.

### **Your rights of review**

21. 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).
22. 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 Regional Australia, Regional Development and Local Government  
GPO Box 803  
Canberra ACT 2601  
**Fax:** +61 2 6247 1347  
**Email:** FOI@regional.gov.au

23. 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 external review from the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

You must apply in writing and you can lodge your application in one of the following ways:

**Online:** [www.oaic.gov.au](http://www.oaic.gov.au)  
**Post:** GPO Box 2999  
Canberra ACT 2601  
**Fax:** +61 2 9284 9666  
**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
**In person:** Level  
25 National Circuit  
Forrest, ACT; or at  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney, NSW

More information about Information Commissioner Reviews is available from  
[http://www.oaic.gov.au/publications/FOI fact sheet12 your review rights.html](http://www.oaic.gov.au/publications/FOI%20fact%20sheet12%20your%20review%20rights.html).



Sally Bassor  
First Assistant Secretary, Office for the Arts Division.

21 March 2012



## Australian Government

### Department of Regional Australia, Regional Development and Local Government

Schedule 1

## Schedule of relevant provisions in the FOI Act

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### 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