



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

**Decision and reason for decision of
 Jaye Smith, Acting First Assistant Secretary, Sports**

Applicant:

Decision date: 10 January 2013

FOI reference number: 12.05

Documents: Documents produced in the last year showing information about the \$10 million grant to Olympic Park Precinct Community Sports Centre.

Contents

Summary 1

Authority to make this decision 2

Background 2

Documents subject to this request 2

Decision 2

Reasons for decision 2

Your rights of review 3

Summary

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

Authority to make this decision

2. I, Jaye Smith, Acting First Assistant Secretary, am an officer authorised by the Secretary of the Department of Regional Australia, 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 17 September 2012 you made a request for access to documents in the possession of the department. Your request sought access to:

"Documents produced in the last year showing information about the \$10 million grant to Olympic Park Precinct Community Sports Centre."

Documents subject to this request

4. The Department has undertaken a search of its records and has identified various documents which fall within the scope of your request. A list of the documents is contained in schedule A, which is attached.

Decision

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

Reasons for decision

6. In accordance with Section 26(1)(a) of the FOI Act, the findings on any material question of fact, referring to the material on which those findings were based and the reasons for my decision to grant partial access to documents follow.
7. In making my decision, I had regard to Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth.
8. I also considered Section 47C and Section 47B of the FOI Act. Section 47C 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.
9. I have identified certain documents that come within the scope of your request but that contains deliberations and recommendations on different courses of action that may be taken. 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.

10. Section 47B provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to cause damage to relations between the Commonwealth and a State.
11. I have identified information that if released may impede future flow of information between the Commonwealth and State. I am confident that release of this information would have an adverse effect on the relationships between the Commonwealth and State and is therefore, for the purposes of the FOI Act, conditionally exempt.
12. 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.
13. In order to assess whether release of the exempt material would be contrary to the public interest, I considered whether the disclosure would:
 - (a) Promote the objects of the Act.
 - (b) Inform debate on a matter of public importance.
 - (c) Promote effective oversight of public expenditure.
14. I also considered whether the disclosure could reasonably be expected to prejudice:
 - (a) An agency's ability to obtain similar information in the future.
 - (b) The management function of an agency.
15. On balance, I considered that the public interest against disclosure to be more persuasive than the public interest factors favouring disclosure. I am satisfied that the public interest is to withhold the exempt material.
16. I have also considered Section 42 of the FOI Act, which states that a document can be exempt if it is subject to legal professional privilege. I have identified a number of documents which contain independent legal advice from a government lawyer to the Department's Executive, which was given in confidence.
17. I am satisfied that the elements of legal professional privilege, as determined by common law, are present and accordingly apply Section 42 to those documents.
18. I have redacted information on pages; 5.1, 7.1 and 8.1. As the information contained within these documents are out of scope.

Your rights of review

19. If you disagree with your FOI decision, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).
20. You can ask the Department to review its decision in relation to access to documents. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different

departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

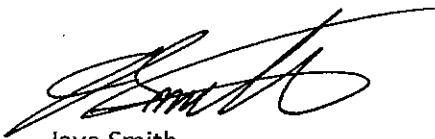
Post: FOI Coordinator
Department of Regional Australia,
Local Government, Arts and Sports
GPO Box 803
Canberra ACT 2601
Email: FOI@regional.gov.au

21. You can ask the OAIC to review the Department's decision in relation to access to documents. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. 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
Post: GPO Box 2999
Canberra ACT 2601
Fax: +61 2 9284 9666
Email: 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_fact_sheet12_your_review_rights.html).



Jaye Smith
Acting First Assistant Secretary
Office for Sport

10 January 2013