



Australian Government
Department of Agriculture
and Water Resources

Ref: LEX-1426

Louise Sales
Friends of the Earth
130 Davey Street
Hobart TAS 7000

Via email: louise.sales@foe.org.au

Dear Ms Sales

Decision on your Freedom of Information request

I refer to your request on behalf of Friends of the Earth, received by the Department of Agriculture and Water Resources (**department**) on 15 January 2019 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

'Pursuant to the Freedom of Information Act, Friends of the Earth requests the recent draft advice issued to states and territories by the Department of Agriculture and Water Resources in relation to proposed amendments to the Gene Technology Regulations 2001 discussed at the Legislative and Governance Forum on Gene Technology meeting in October 2018'.

My decision

The department holds one document (totalling 6 pages) that relates to your request.

I have decided to **refuse access** to the document.

I have decided that the document, or parts of it, that you have requested is exempt under the FOI Act as it contains:

- information that is deliberative matter, the disclosure of which would be against the public interest (section 47C conditional exemption); and
- information which would, or could reasonably be expected to cause damage to relations between the Commonwealth and a State (section 47B conditional exemption).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

Charges

On 31 January 2019, the department made a preliminary estimate of the charges applicable to your request in the amount of \$14.50. On 7 February 2019, the department received payment in full.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@agriculture.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@agriculture.gov.au.

Yours sincerely



Alison Curran
A/g Assistant Secretary
Biotechnology Dairy & Levies Policy
Agricultural Policy Division

21 February 2019



LIST OF DOCUMENTS FOR RELEASE

LEX-1426

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-6	Unknown	Advice in relation to proposed amendments of the Gene Technology Regulations 2001	Exempt in full	S 47B S 47C	Pages 1-6: information which would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State conditionally exempt under s 47B(a) Pages 1-5: documents containing deliberative matter conditionally exempt under s 47C(1)

REASONS FOR DECISION

What you requested

'Pursuant to the Freedom of Information Act, Friends of the Earth requests the recent draft advice issued to states and territories by the Department of Agriculture and Water Resources in relation to proposed amendments to the Gene Technology Regulations 2001 discussed at the Legislative and Governance Forum on Gene Technology meeting in October 2018.'

What I took into account

In reaching my decision, I took into account:

- your original request dated 15 January 2019;
- the documents that fall within the scope of your request;
- consultations with departmental officers about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that the document that you requested is exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to that document are discussed below.

Section 47C of the FOI Act – Deliberative processes

I have applied the conditional exemption in section 47C to document one.

Section 47C of the FOI Act provides:

'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.'

Paragraph 6.58 of the Guidelines relevantly provides:

A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have bearing upon one's course of action. In short, deliberative processes involved in the functions of an agency are thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

The document contains the department's consideration of the proposed amendments to the *Gene Technology Regulations 2001*. This includes the department's consideration of implications as a result of the proposed amendments, as well as an assessment of the impact of the proposed amendments in relation to the functions and activities of the department.

Consistent with the scope of the request, the documents contain a candid discussion and assessment of the proposed amendments to the *Gene Technology Regulations 2001*. On this basis, I am satisfied that the above mentioned document contains deliberative matter for the purposes of section 47C of the FOI Act. I am further satisfied that the document is conditionally exempt under section 47C of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- for example, prejudice the department's thinking processes in relation to the proposed amendments to the *Gene Technology Regulations 2001*, and the impacts of those amendments on the department's functions and activities if the documents resulting from such deliberations were available through FOI processes.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

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

I have applied the conditional exemption in section 47B to document one.

Section 47B of the FOI Act relevantly provides:

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

Paragraph 6.33 of the Guidelines relevantly provides that disclosure may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy;
- adversely affecting the administration of a continuing Commonwealth-State project;
- substantially impairing, but not merely modifying, Commonwealth-State programs;
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships; or
- impairing or prejudicing the flow of information to and from the Commonwealth.

Paragraph 6.35 of the Guidelines further provides that the potential damage need not be quantified but the effect on relations arising from the disclosure must be adverse.

The Legislative and Governance Forum on Gene Technology (**Forum**) is formally established under the Intergovernmental Gene Technology Agreement 2001. Membership of the forum includes one ministerial member from the Commonwealth and all States and Territories. Its functions include issuing policy principles, policy guidelines and codes of practice to govern the activities of the Gene Technology Regulator, as well as oversee the operation of the *Gene Technology Act 2000* and the *Gene Technology Regulations 2001*.

In doing this, a core objective of the Forum is to promote cooperation, coordination, consistency and synergy across and between Australian governments. To achieve this objective, the Forum often seeks the provision of advice from its members. Requests for such advice, including the circumstances and context in which the advice was sought, are generally made on an understanding of confidentiality that facilitates the flow of information between the members, which includes state and territory governments.

In this instance, the document has arisen out of a request to provide the Forum with advice on the proposed amendments to the *Gene Technology Regulations 2001*. Release of the document could damage Commonwealth-State relations as the release would undermine the confidentiality of future communications and meetings of the Forum. In addition, it would also adversely affect the continued level of consultation and collaboration underpinning the effective operation of the Forum.

On this basis, I have decided that the information included in document one referred to in the Schedule is conditionally exempt under section 47B of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance, being background or contextual information that may have informed or contributed to the making of a decision.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to:

- impede the flow of information between the Forum and the Commonwealth in the future;
- prejudice the department's ability to provide confidential or similar information in the future;
- adversely impact on effective collaboration between the members of the Forum in future meetings and communications.

In weighing these factors, I take into account that the Department of Health publishes information on its website (<http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-gene-tech-oct18-comm.htm>) regarding the Forum, which includes information regarding key issues considered at the meeting. In addition, the Forum often publishes final policy principles in relation to matters which have been under consideration. In this instance, I consider that this published information strikes the appropriate balance between the public release of information in regards to these documents, and protecting the collaboration between members of the Forum.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

Conclusion

In summary, I am satisfied that the parts of the document, as set out in the Schedule, are conditionally exempt under section 47C and section 47B of the FOI Act. Furthermore I have decided that on balance it would be contrary to the public interest to release this information. Accordingly I have decided not to release the document in full to you.

As identified in the Schedule, I have deleted the exempt information in the document/s and released the remaining material in accordance with section 22(1) of the FOI Act.

Summary of my decision

In conclusion, I have decided to:

- refuse access to one document.

I have decided that:

- the document is conditionally exempt in full under section 47B and section 47C of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).