

GV

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By email only: [foi+request-11690-5fd0b951@righttoknow.org.au](mailto:foi+request-11690-5fd0b951@righttoknow.org.au)

Dear GV,

### Your freedom of information request to the Tax Practitioners Board

1. I refer to your request under the *Freedom of Information Act 1982 (FOI Act)* to the Tax Practitioners Board (**the Board**) on 15 July 2024 (**FOI request**).
2. On 15 July 2024, you specifically requested access to

*“...minutes of meetings, briefs, and file notes relevant to the following matters related to the Tax Agent Services (Code of Professional Conduct) Determination 2024:*

- 1) *The decision to not conduct consultations with professional bodies in the accounting and tax industries;*
- 2) *Consultations with the TPB by Minister Jones (or his office) in respect of the determination;*
- 3) *Impact of the determination on the tax industry in Australia;*
- 4) *Guidance products to be prepared for tax agents bound by changes to the Code of Professional Conduct.”*

3. I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents. My decision and the reasons for that decision are outlined below.

### Decision

4. The Board has conducted a search of its records for documents which fall within the scope of your request.
5. I have decided, pursuant to section 11A of the FOI Act, to grant you access to part of the documents requested, specifically those that are characterised by the fourth category of your FOI request.
6. Access to those documents has been deferred under section 21 of the FOI Act. The complete schedule of documents considered under this FOI request will be

provided to you, along with copies of the documents to which access has been granted, at a later date in time, in accordance with my reasoning below.

7. I also note that some documents within the scope of your FOI request could not be found or do not exist. The Board was unable to locate any documents which would fall within categories one, two or three of your FOI request. Therefore, I refuse access to those documents to the extent that section 24A of the FOI Act applies.
8. In making my decision, I referred to the following:
  - a. the terms of your FOI request;
  - b. the content of the identified documents that fall within the scope of your FOI request;
  - c. the relevant provisions of the FOI Act;
  - d. the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
  - e. the relevant provisions of the *Tax Agent Services Act 2009* (**TASA**).
9. The reasons for my decision are set out below.

### **Reasons for decision**

#### *Section 21 – Deferment of access*

10. Section 21 of the FOI Act states:

- (1) *An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:*
  - (a) *if the publication of the document concerned is required by law until the expiration of the period within which the document is required to be published; or*
  - (b) *if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available until the expiration of a reasonable period after its preparation for it to be so presented or made available; or*
  - (c) *if the premature release of the document concerned would be contrary to the public interest until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or*
  - (d) *if a Minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public until the expiration of 5 sitting days of either House of the Parliament.*
- (2) *Where the provision of access to a document is deferred in accordance with subsection (1), the agency or Minister shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.*

11. Under category four of your FOI request, you have requested access to “minutes of meetings, briefs, and file notes relevant to... [g]uidance products to be prepared for tax agents bound by changes to the Code of Professional Conduct”.
12. Although I grant access to those documents under section 11A of the FOI Act, I consider it necessary to defer access to those documents pursuant to paragraph 21(1)(c) of the FOI Act, by reason that their release would be contrary to the public interest at this time.

*Public interest*

13. The Board has a critical role in protecting consumers by regulating the provision of tax agent services within Australia. In addition to its investigative and enforcement functions, the Board, on behalf of the Government, publishes official guidance on the interpretation and operation of the *Tax Agent Services Act 2009 (TASA)*, and legislative instruments formed under the TASA.
14. The Ministerial power under section 30-12 of the TASA has been used for the first time to publish the Tax Agent Services (Code of Professional Conduct) Determination 2024 (the Determination).<sup>1</sup>
15. The Board is currently in the process of drafting guidance documents in relation to the Determination.<sup>2</sup> Commencing from early August, the Board will be seeking public consultation on the Board’s draft guidance for specific provisions within the Determination. The public consultation process is expected to finalise in early October, with all guidance products being released in early November.
16. To date, there has been significant public interest in the Determination, and this will continue through the public consultation process for the Board’s draft guidance in relation to the Determination. Given the importance of the Board’s guidance in interpreting and applying the TASA and other legislative instruments, it is critical that the process of receiving feedback for the drafting of that guidance is properly and fairly managed. This ensures that the Board’s guidance materials are consistent and reliable.
17. Therefore, I consider that the release of documents at this time under this FOI request is contrary to the public interest in that it would likely interfere with the proper and orderly conduct of genuine public participation in the publicly available consultation process currently underway for the draft guidance products.
18. Accordingly, it is my decision to defer the release of the documents until after the occurrence of an event, beyond which the release of the documents would no longer be contrary to the public interest.

*Period of deferment*

19. The release of the documents is deferred until after the publication of all guidance products in relation to the Determination, this being the event referred to above in paragraph 18.

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<sup>1</sup> TPB Media Release on the use of the Ministerial power to publish the Determination: <https://www.tpb.gov.au/new-code-determination-lifts-professional-standards-tax-practitioners>.

<sup>2</sup> TPB Communique on the Tax Practitioner Governance and Standards Forum and Consultative Forum: <https://www.tpb.gov.au/tax-practitioner-governance-and-standards-forum-and-consultative-forum-24-july-2024>.

*Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received*

20. A thorough and comprehensive search of the Board's records was undertaken to locate documents that fall within each of the four specified categories of documents that you refer to in your FOI request.

21. Section 24A(1) of the FOI Act states:

*(1) An agency or Minister may refuse a request for access to a document if:*

*(a) all reasonable steps have been taken to find the document; and*

*(b) the agency or Minister is satisfied that the document:*

*(i) is in the agency's or Minister's possession but cannot be found; or*

*(ii) does not exist.*

22. I am satisfied that all reasonable steps have been taken to find other documents that would fall within categories one, two and three of your FOI request, and that those documents cannot be found or do not exist.

23. Accordingly, I must refuse your request for access to those documents in accordance with subsection 24A(1) of the FOI Act.

### **Your review rights**

24. Please refer to the **enclosed** 'Notice of Rights of Review' for further information about your review rights in relation to this decision regarding your FOI request.

### **Further assistance and information**

25. Please note that under section 70-35 of the TASA, the Board is not obliged to disclose official information to a court.

26. If you have any queries in relation to this decision, please do not hesitate to contact the Board's Legal Unit by email at [foi@tpb.gov.au](mailto:foi@tpb.gov.au).

Yours sincerely,

Legal Officer  
Tax Practitioners Board

### **Encl:**

1. Notice of Rights of Review