



Glenn Hamiltonshire

Via email: [foi+request-11714-a3c96b81@righttoknow.org.au](mailto:foi+request-11714-a3c96b81@righttoknow.org.au)

Dear Glenn Hamiltonshire

### Decision on your Freedom of Information request

I refer to your request received by the Department of Agriculture, Fisheries and Forestry (**department**) on 9 January 2025 for internal review of the department's decision under the *Freedom of Information Act 1982 (FOI Act)* dated 2 January 2025 (**primary decision**).

#### My decision

I have decided to affirm the primary decision.

The reasons for my decision are set out in **Attachment A**.

#### You can ask for a review of my decision

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 may apply for an OAIC review through the following [link](#). 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](http://www.oaic.gov.au) or phone the OAIC on 1300 363 992.

#### Further assistance

If you have any questions, please email [foi@aff.gov.au](mailto:foi@aff.gov.au).

Yours sincerely

Kathleen Quan  
A/g Assistant Secretary  
Enterprise Strategy and Governance Division  
05 February 2025



**LIST OF DOCUMENTS FOR RELEASE**

**IR-31964**

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-57	5 June 2024	Brand standards manual	Exempt in full	s 47(1)(b)	Pages 1-57: commercially valuable information exempt under s 47(1)(b).
2.	58-127	January 2024	Style guide	Release in part	s 47E(d)	Pages 63, 66 and 81: certain operations of agencies exempt under s 47E(d).
3.	128-149	January 2024	References guide	Release in part	s 47E(d)	Page 132: certain operations of agencies exempt under s 47E(d).
4.	150-158	25 June 2024	Writing print and web content guide	Release in part	s 47E(d)	Pages 151 and 155: certain operations of agencies exempt under s 47E(d).
5.	159-161	25 June 2024	Writing import industry advice notices	Release in part	s 47E(d)	Page 159 and 161: certain operations of agencies exempt under s 47E(d).

## REASONS FOR DECISION

### What you requested

'I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Department of Agriculture Fisheries & Forestry'

### Primary decision

On 2 January 2025, the primary decision maker determined that there were 5 documents (totalling 161 pages) that related to your request.

The primary decision maker decided to grant you part access to 4 documents (documents 2-5) and refuse access to 1 document (document 1) on the basis that:

- certain parts of documents 2 – 5 that you requested included information which would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency and be contrary to the public interest if released (section 47E(d)); and
- document 1 included information that is commercially valuable, the disclosure of which would, or could reasonably be expected to be destroyed or diminished if the information was disclosed (section 47(1)(b)).

### Request for internal review

On 9 January 2025, you applied for internal review of the primary decision and requested review of the primary decision. In your request for internal review, you provided the following:

'I am contacting indicating that I am requesting a internal review into the decisions reached. To be specific, I am seeking to challenge and overturn the decisions regarding Document 1 and the s 47(1)(b) exemptions. For the avoidance of doubt, I do not challenge the exemptions under 47E(d).

In raising my objections, I make note of the option provided by the OAIC in McKinnon and Department of Immigration and Citizenship [2012] AICmr 34 ('McKinnon'). In McKinnon, where a government department had sought to cite the commercially valuable information exemption as a way to omit documents relating to the commercial values of facilities maintained by Serco, arguing that such documents were considered commercially valuable for the third party. This claim was rejected by the AIC, who stated that even documents covering the internal business affair from Serco, "This by itself is not enough to establish that the information has commercial value for the purposes of s 47"

If such documents were not considered exempt in this case, a decision later upheld by the OAIC at a later date (see Maritime Union of Australia and Department of Infrastructure and Regional Development), I do not believe such exemptions would continue to apply.

I further note that, while not applicable for the purposes of this process, this decision to rely on exemptions and redactions based on the use of First Nations artwork and artists is uncommon, given the use of First Nations art has been publicly revealed in full in other similar FOI processes, such as the Department of Climate Change, Energy, the Environment and Water's style guide

[https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Fdcceew\\_stylebrandwriting\\_guides&data=05%7C02%7Cfoi%40aff.gov.au%7C2da25bfc042048202fb408dd2fe5dea6%7C2be67eb7400c4b3fa5a11258c0da0696%7C0%7C0%7C638719386535628815%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljoiTWFpbCIslldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=DkOVZFKQWtyzjPPzszs8E7Hc%2FoaR0SfPS4H%2B0tkC5%2BWg%3D&reserved=0\).](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Fdcceew_stylebrandwriting_guides&data=05%7C02%7Cfoi%40aff.gov.au%7C2da25bfc042048202fb408dd2fe5dea6%7C2be67eb7400c4b3fa5a11258c0da0696%7C0%7C0%7C638719386535628815%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljoiTWFpbCIslldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=DkOVZFKQWtyzjPPzszs8E7Hc%2FoaR0SfPS4H%2B0tkC5%2BWg%3D&reserved=0).)

I believe that it is not in the interests of the Department to maintain this blanked exemption, and the entire Style Guide should be released without redactions (besides those for purposes like 47E(d)).’

### **What I took into account**

In reaching my decision, I took into account:

- your original request dated 18 July 2024;
- the primary decision dated 2 January 2025;
- your request for internal review dated 9 January 2025;
- the documents that fall within the scope of your request;
- information 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**); and
- 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 certain documents and parts of documents are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

#### Section 47(1)(b) of the FOI Act - documents disclosing commercially valuable information

I have decided to affirm the primary decision as I am also satisfied that document 1 is exempt under section 47(1)(b).

Section 47 of the FOI Act provides:

‘(1) A document is an exempt document if its disclosure under this Act would disclose:

- (a) trade secrets; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.'

Paragraph 5.234 of the Guidelines provides that, in order for a document to be exempt under section 47(1)(b) of the FOI Act, it must satisfy two criteria:

- The document must contain information that has a commercial value either to an agency or to another person or body; and
- The commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

Furthermore, paragraph 5.235 of the Guidelines relevantly provides that in deciding whether information has commercial value, a decision maker may consider whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value.

As explained in the primary decision, the document is a brand standards manual produced for internal department use. The document contains graphic designs and includes First Nations artwork procured by the department and was created specifically for the department. This content is not publicly available and is only known by the department, the agency who developed the manual and the First Nations artist to whom it has value. I also consider that a genuine 'arms-length' buyer would be prepared to pay to obtain the information, on the basis that it contains a detailed information about the development of the department's brand. I am satisfied that the information has commercial value.

I agree with the primary decision maker that if this information were disclosed, it could provide any graphic design company a competitive advantage when pitching for work with the department. On this basis, I am also satisfied that the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

In your request for internal review, you referred to the Australian Information Commissioner's (AIC) decision in *McKinnon and Department of Immigration and Citizenship* [2012] AICmr 34 (*McKinnon*). In *McKinnon*, the AIC found that letters from Serco to the department which contained information relating to the 'internal business affairs' of Serco was not sufficient to establish commercial value ([43]). The AIC was also not satisfied that the information continued to have commercial value that could be diminished ([44]). The AIC further reasoned:

'I am not satisfied that merely because the disclosure of some information may adversely affect a person or a business, that this fact alone establishes that the information has commercial value or that the commercial value of the information will be diminished by public disclosure. It is still necessary to point to some intrinsic commercial value that information holds, independently of the impact that disclosure of the information will have on a person or business...'

For the following reasons, I consider this matter can be distinguished from *McKinnon*. It is a question of fact whether information has commercial value. As explained above, I consider the information in the document to have commercial value because it was procured by, and created specifically for, the department. I consider this commercial value is intrinsic and independent of the impact that any disclosure could have on the department or the artists. Secondly, I consider that commercial value could be diminished if the information was disclosed. In particular, I consider that its disclosure could provide a competitive advantage to other graphic design companies or artists that seek to obtain work with the department.

In your request for internal review, you note that another agency's style guide has been released in full in other similar FOI processes. You submit that relying on exemptions and redactions based on the use of First Nations artists is "uncommon". However, I have not applied the exemption in section 47(1)(b) *solely* on the basis that the document contains First Nations artworks. Rather, I have applied the exemption because the information in the document is commercially valuable to the department and the artists; and that value could be diminished if it were released.

For the reasons set out above, I agree with the primary decision maker that document 1 is exempt under section 47(1)(b) of the FOI Act.

Section 47E(d) of the FOI Act – certain operations of agencies

Based on your request for internal review, I understand that you do not contest the application of the conditional exemption in section 47E(d) to parts of documents 2 –5 as identified in the Schedule.

For completeness, I confirm that I affirm the primary decision maker's decision and agree with the reasoning provided in the original decision in respect of this exemption.

**Summary of my decision**

In conclusion, I have decided to affirm the primary decision that:

- document 1 is exempt, in full, under section 47(1)(b) of the FOI Act; and
- documents 2 – 5 are exempt, in part, under section 47E(d) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).