



Australian Government  
The Treasury



7 February 2025  
FOI ref: 3812

Mr Francis Markham  
By email: [foi+request-12479-95c5116f@righttoknow.org.au](mailto:foi+request-12479-95c5116f@righttoknow.org.au)

Dear Mr Markham,

### FREEDOM OF INFORMATION REQUEST – DECISION

I refer to your request to Treasury on 5 December 2024, as revised on 18 December 2024, for access under the *Freedom of Information Act 1982* (**FOI Act**) to the following:

*Documents, excluding emails, that report on those evaluations, reviews or assessments of the impact of tobacco excise on smoking behaviour (e.g. consumption, prevalence, product switching to e-cigarettes, product switching to the black market, etc.) that have been undertaken or commissioned by Treasury since 2018.*

I am an authorised decision maker under section 23 of the FOI Act.

#### **Decision**

The Treasury has identified 22 documents within the scope of your request. I have decided to grant access to two documents in full (**Documents 1 and 19**). I have decided to refuse access to ten documents in full under section 34 (Cabinet documents) and section 47E(d) (operations of certain agencies) of the FOI Act (**Documents 5, 6, 7, 8, 9, 10, 13, 20, 21 and 22**). I have decided to release the remaining ten documents in part (**Documents 2, 3, 4, 11, 12, 14, 15, 16, 17 and 18**). The documents for release are attached, edited under section 22 of the FOI Act to delete irrelevant material. My decision on each document is shown in the schedule.

The reasons for my decision follow.

#### **Material Considered**

The material to which I have had regard in making this decision includes the scope of the request and content of the document subject to your request, the relevant provisions in the FOI Act and Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and advice from subject matter experts within the Treasury and the Department of the Prime Minister and Cabinet.

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***Reasons for decision***

Material deleted pursuant to Section 22

Section 22 of the FOI Act allows information that is irrelevant to your request to be deleted.

The documents in scope of your request contain the names of government employees. We informed you in our acknowledgement email that it is our usual practice not to include the personal information of government employees and invited you to inform us if you did not agree with us processing the request on this basis. As we did not hear from you, the personal information of government employees has been deleted under section 22 of the FOI Act.

The documents also contain material that is irrelevant to your request. This material has been deleted under section 22 of the FOI Act.

Cabinet documents – section 34

Section 34(1) of the FOI Act provides that a document is exempt if:

- (a) both of the following are satisfied:
  - i. the document has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted; and
  - ii. the document was brought into existence for the dominant purpose of submission to Cabinet.
- (b) it is an official record of the Cabinet; or
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.

Document 8 is a draft version of a document that was submitted to Cabinet for consideration and was created for the dominant purpose of being so submitted. Document 9 is a document which was submitted to Cabinet for consideration and was created for the dominant purpose of being so submitted. Document 22 was brought into existence for the dominant purpose of briefing a Minister on a document to which section 34(1)(a) of the FOI Act applies.

I have therefore decided Document 8 is exempt in full under section 34(1)(d), Document 9 is exempt in full under section 34(1)(a), and Document 22 is exempt in full under section 34(1)(c) of the FOI Act.

Agency operations – section 47E(d)

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient operations of an agency.

Documents 5-7, 10, 13, 20 and 21 are comprised of material, the disclosure of which, would reveal the Treasury's deliberative processes in relation to Cabinet and compromise the confidentiality of the Cabinet process. The provision of sound, confidential and authoritative advice on issues of significance to the Cabinet is a core function of the Treasury.

Accordingly, the principle of Cabinet protecting confidentiality has long been recognised in Australian government processes and legislation, including under section 34 of the FOI Act.

Documents 13, 20 and 21 are draft working papers containing the preliminary views of the Treasury. These preliminary views do not represent the official views of the Treasury. Further, I find that disclosure of this information would impede the ability of the Treasury to effectively deliberate over its proposed policies and recommendations.

I am satisfied that the disclosure of Documents 5-7, 10, 13, 20 and 21 would have a substantial adverse effect on the proper and efficient conduct of the operations of the Treasury, including with regard to confidential government processes.

I have therefore decided Documents 5-7, 10, 13, 20 and 21 are conditionally exempt under section 47E(d) of the FOI Act. My consideration of the public interest test is set out below.

*Public Interest Test*

Section 11A(5) of the FOI Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors favouring release, and section 11B(4) sets out factors that must not be taken into account. The FOI Guidelines set out factors in favour of, and against, releasing conditionally exempt material.

In favour of disclosure, I consider access to the conditionally exempt material would promote the objects of the FOI Act and increase scrutiny of the government's activities.

Against release of the conditionally exempt material in 5-7 and 10, I have considered the importance of maintaining the Treasury's ability to generate confidential recommendations and advice to support policy development, including through the Cabinet process. Against release of the conditionally exempt material in Documents 13, 20 and 21, I have considered the public interest in maintaining the Treasury's ability to deliberate on policy matters before providing advice for government consideration.

On balance, I consider the public interest factors against disclosure outweigh the factor in favour of disclosure. I have therefore decided Documents 5-7, 10, 13, 20 and 21 are exempt under section 47E(d) of the FOI Act.

***Rights of Review***

A statement setting out your rights of review in this matter is attached.

***Disclosure Log***

The Treasury publishes documents disclosed in response to FOI requests on the Treasury website on the same day that the decision is sent to an applicant. This is consistent with the arrangements established by section 11C of the FOI Act. In this instance, I find the released documents are appropriate for publication.

Yours sincerely

Emma Baudinette  
Assistant Secretary  
State, Indirect & Industry Tax & Not-For-Profit Branch

## FOI 3812 Document Schedule

Doc No.	Description	Decision
1.	Talking Points - KPMG Illicit Tobacco Report	Release in full
2.	Back Pocket Brief – Illicit Tobacco Measures	Release in part - • Section 22 – irrelevant
3.	Questions and Answers for Illicit Tobacco Measures	Release in part - • Section 22 – irrelevant
4.	Back Pocket Brief – Illicit Tobacco	Release in part - • Section 22 – irrelevant
5.	Key Points – Tobacco Excise Increases	Refuse in full • Section 47E(d) – operations of certain agencies
6.	Meeting Brief - 23-24 Budget Tobacco Options	Refuse in full • Section 47E(d) – operations of certain agencies
7.	Internal Comments – 23-34 Budget Tobacco Increase Proposal	Refuse in full • Section 47E(d) – operations of certain agencies
8.	NPP – 23-24 Budget Changes	Refuse in full - • Section 34(1)(d) – Cabinet document
9.	Pink Brief – 23-34 Budget Changes	Refuse in full - • Section 34(1)(a) – Cabinet document
10.	Costing Note	Refuse in full - • Section 47E(d) – operations of certain agencies
11.	Talking Points – Tobacco Excise	Release in part - • Section 22 – irrelevant
12.	Additional Points – Tobacco Taxes and Illicit Tobacco	Release in part - • Section 22 – irrelevant
13.	Draft Working Paper on Illicit Tobacco	Refuse in full - • Section 47E(d) – (operations of certain agencies)
14.	Tax Analysis Division Chart – Analysis of Patterns in Monthly Tobacco Clearance	Release in part - • Section 22 – irrelevant
15.	Back Pocket Brief for Senate Estimates	Release in part - • Section 22 – irrelevant
16.	Elasticity Analysis for Tobacco	Release in part -

		<ul style="list-style-type: none"> <li>• Section 22 – irrelevant</li> </ul>
<b>17.</b>	Preliminary Tobacco Exercise Forecasts	Release in part - <ul style="list-style-type: none"> <li>• Section 22 – irrelevant</li> </ul>
<b>18.</b>	Senate Estimates Briefing – Smoking, vaping and tobacco excise	Release in part - <ul style="list-style-type: none"> <li>• Section 22 – irrelevant</li> </ul>
<b>19.</b>	Question on Notice Response – Vaping and Tobacco Excise Questions	Release in full
<b>20.</b>	Draft Working Paper on Illicit Tobacco	Refuse in full - <ul style="list-style-type: none"> <li>• Section 47E(d) – operations of certain agencies</li> </ul>
<b>21.</b>	Draft Working Paper – Shadow Economy Review	Refuse in full - <ul style="list-style-type: none"> <li>• Section 47E(d) – operations of certain agencies</li> </ul>
<b>22.</b>	Ministerial Correspondence Attachment -	Refuse in full - <ul style="list-style-type: none"> <li>• Section 34(1)(c) – Cabinet document</li> </ul>

## INFORMATION ON RIGHTS OF REVIEW

### 1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to [FOI@Treasury.gov.au](mailto:FOI@Treasury.gov.au).

**OR**

### 2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

### 3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.