



4 February 2025

Oliver Smith

**BY EMAIL:** [foi+request-12509-dfec8195@righttoknow.org.au](mailto:foi+request-12509-dfec8195@righttoknow.org.au)

**In reply please quote:**

FOI Request: FA 24/12/00438

File Number: FA24/12/00438

Dear Mr Smith

**Freedom of Information (FOI) request – Decision**

On 9 December 2024, the Department of Home Affairs (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following document:

*Under the FOI Act, I seek a copy of the Ministerial Brief provided to the office of Home Affairs Minister Tony Burke on 6/9/24 with the Brief PDR No. MS24-001272.*

**2 Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

## **4 Document in scope of request**

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 9 December 2024 when your request was received.

## **5 Decision**

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Exempt one document in full from disclosure

## **6 Reasons for Decision**

Detailed reasons for my decision are set out below.

### **6.1 Section 42 of the FOI Act – Legal Professional Privilege**

Section 42 of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that the document comprise confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of this document is not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The document does not fall within the definition of operational information and remain subject to legal professional privilege.

I have decided that the document is exempt from disclosure under section 42 of the FOI Act.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **8 Your review rights**

If you disagree with this decision, you have the right to apply for either an internal review or an Information Commissioner review of the decision.

### ***Internal review***

If you want the Department to review this decision, you must make your internal review request within 30 days of being notified of this decision.

When making your internal review request, please provide the Department with the reasons why you consider this decision should be changed.

You can send your internal review request to:

**Email:** [foi.reviews@homeaffairs.gov.au](mailto:foi.reviews@homeaffairs.gov.au)

Or

**Postal mail:**  
Freedom of Information  
Department of Home Affairs  
GPO Box 241 MELBOURNE VIC 3001

The internal review will be carried out by an officer who is more senior than the original decision maker. The Department must make its decision on the review within 30 days of receiving your request for internal review.

### ***Information Commissioner review***

If you want the Australian Information Commissioner to review this decision, you must make your request to the Office of the Australian Information Commissioner (OAIC) within 60 days of being notified of this decision.

You can apply for an Information Commissioner review using the [Information Commissioner review application form on the OAIC website](#).

You can find more information about Information Commissioner reviews [on the OAIC website](#).

## **9 Making a complaint**

You may make a complaint to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. This is a separate process to the process of requesting a review of the decision as indicated above.

You can make an FOI complaint to the Office of the Australian Information Commissioner (OAIC) at: [FOI Complaint Form on the OAIC website](#).

## **10 Contacting the FOI Section**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@homeaffairs.gov.au](mailto:foi@homeaffairs.gov.au).

Yours sincerely

*Electronically signed*

**Peter**  
**Position number 00003356**  
Authorised Decision Maker  
Department of Home Affairs