



20 December 2024

Oliver Smith

BY EMAIL: foi+request-12632-75dceeaf@righttoknow.org.au

In reply please quote:

FOI Request: FA 24/12/00870

File Number: FA24/12/00870

Dear Oliver Smith

Freedom of Information (FOI) request – Decision

On 16 December 2024, the Department of Home Affairs (the Department) received a request for access to documents 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:

Under the FOI Act, I seek a copy of the Ministerial Brief provided to the office of Home Affairs Minister Tony Burke on 30/8/24 with the Brief PDR No. MS24-001197.

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 documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents 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 documents to which you sought access

4 Document in scope of request

The Department has identified one document, with attachments, as falling within the scope of your request. These documents were in the possession of the Department on 16 December 2024 when your request was received.

5 Decision

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

- Exempt one document and attachments in full from disclosure under s. 42(1) of the FOI Act – Legal Professional Privilege

6 Reasons for Decision

My findings of fact and reasons for deciding that the exemption provision applies to that information 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 documents 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 contents of these documents are not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have decided that the documents are 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

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.

Yours sincerely,

Signed electronically

Peter
Position number 00003356
Authorised Decision Maker
Department of Home Affairs