



Australian Government
Attorney-General's Department
Office of Corporate Counsel

File No: 12/12385
Date: 9 October 2012

Mr Rodney Serkowski
Treasurer
Pirate Party Australia

Sent via email only: rodney.serkowski@pirateparty.org.au

Dear Mr Serkowski

Re: Freedom of Information Request

I refer to your request under the *Freedom of Information Act 1982* (the FOI Act) received by this Department on 6 September 2012. You have sought access to:

'copies of any draft legislation not presently made public considered by the Attorney-General for the purposes of amending or expanding the authority of government to retain or intercept communication data, as mentioned by Phillip Dorling in The Sydney Morning Herald on August 10, 2012'.

Decision

Pursuant to arrangements approved by the Secretary of this Department under section 23 of the Act, I am authorised to make decisions in relation to this matter on behalf of the Department. Accordingly, I have examined all the material held by this Department within the ambit of your request.

I have decided, however, not to release that material to you.

Section 26 of the Act provides that where access to material has been denied in full or in part, a statement must be provided to the applicant setting out the findings on the material questions of fact, the material on which those findings are based and the reasons for the decision. Set out below is such information in relation to the material that I have exempted.

Findings on Material Questions of Fact

My findings on material questions of fact are that the material in question contains deliberative matter relating to the functions and responsibilities of this Department.

Material on Which Those Findings are Based

The material on which those findings are based consists of the material within the ambit of your request and other related documents.

Reasons for Decision

The reasons for my decision not to release the abovementioned material is that it is, firstly, in my view conditionally exempt from disclosure under section 47C of the Act. Subsection 47C(1) provides:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth; or*
- (d) the Government of Norfolk Island.*

I have decided that the material in question is conditionally exempt under the above provision because its disclosure would disclose matter that records the substance of advice, opinions and recommendations resulting from consultations and deliberations that have taken place in the course of, and for the purposes of, the deliberative processes involved in the functions of this Department.

Subsection 11A(5) of the Act requires that access to conditionally exempt material must still be provided unless that access would, on balance, be contrary to the public interest. In this particular case, I have found that the public interest factors in favour of disclosure, including the right of the public to access government-held information, are outweighed by the factors against disclosure. These factors are, in my view, as follows:

- the material is still in draft form;
- the material has not gone through the necessary whole-of-government review and approval processes; and
- to release such material at this stage would, in my view, prejudice the current negotiations and decision making processes which are in train.

For the above reasons, the release of this material would, in my view, be contrary to the public interest.

Right of Review

Should you wish to have my decision in this matter reviewed, you have two options. Firstly, you are entitled to request an internal review of my decision by a senior officer of this Department. Should you wish to pursue this option, you should write to me within 30 days of receiving this letter.

Alternatively, you are entitled to request a review of my decision by the Office of the Australian Information Commissioner (OAIC). Should you wish to pursue that course and action you should write to the OAIC, within 60 days of receiving this letter, at GPO Box 2999, Canberra, ACT, 2601. You are also entitled to make a complaint to the OAIC about the way the Department handled your request.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L. Tudor', is written over a light blue rectangular background.

Logan Tudor

Legal Officer

FOI & Privacy Section

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