



19 August 2021

FOI ref: 2933

Mr Ben Bucknell

By email:

Dear Mr Bucknell

Freedom of Information Request – Internal review decision

I refer to your letter of 20 July 2021 seeking internal review of the access refusal decision under the *Freedom of Information Act 1982 (FOI Act)* of Mr James Kelly dated 8 July 2021. You also contended the Treasury's charge to process your request.

Original request and decision

On 12 May 2021, you requested access to the following:

On 27 Nov 19, the Treasurer and the Minister for Business made a joint press statement: "The Morrison Government has today announced that it has agreed to terms with the four major banks, HSBC and Macq. Group to establish the Australian Business Growth Fund". I request the following under the Freedom of Information Act:

1) the November 2019, Heads of Agreement or Memo Of Understanding, or other such document that sets out the "agreed terms" referred to in media release. In the absence of such document, emails or file notes on which the Government relied to make statement that it had "agreed terms" with the 4 major banks – in November 2019; and

2) the October 2020 final shareholders agreement between the banks and Gov't (see other media releases).

Please note:

A) the CBA Chairman said at AGM that she expected Govt to release (if not true, will render shareholder approval subject to re-vote as this info will have been misleading);

B) if agreement contains confid provision, must be read in light of exclusions for info in the public domain, or required by law or by request from authority (such as under FOI provisions); and

3) public interest immunity no longer valid, as agreements are no longer 'under negotiation and commercial-in-confidence'.

Internal review decision

I am authorised under section 23 of the FOI Act to make decisions. I have conducted an internal review of the original decision, which is a fresh consideration of the matter. I was not involved in, nor consulted about, the making of the decision under review.

FIND TREASURY ON   

I agree with the original decision maker's assessment that there are two documents within scope of your request – the Australian Business Growth Fund (**ABGF**) shareholders agreement dated 16 October 2020 (document 1) and the ABGF summary of key terms dated 24 October 2019 (document 2).

I have decided to refuse access to both documents under sections 45, 47(1)(b), 47D and 47E(d) of the FOI Act. This is a departure from Mr Kelly's decision to fully exempt the material under sections 45, 47G(1)(a) and 47G(1)(b) of the FOI Act, but the result is the same. I have also decided not to alter the charge. The reasons for my decision follow.

Material considered

The material to which I have had regard in making this decision includes:

- the scope of your FOI request and the matters raised in your request for internal review;
- the content of the documents subject to the request;
- third party consultation responses and advice from subject matter experts within the Treasury;
- the relevant provisions in the FOI Act and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**), the *Freedom of Information (Charges) Regulations 2019*, and relevant case law.

Your internal review contentions

I will now address your various contentions on internal review, followed by my reasons for decision.

Ground 1: *The Commonwealth Bank of Australia (CBA) chairperson assured 800,000 shareholders at 9/9/2020 AGM that the Government would release the documents.*

Notwithstanding what the CBA chairperson may or may not have said at their AGM, the CBA has, in fact, maintained confidence in both of the relevant documents, consistent with their contractual obligations and their FOI consultation objections to disclosure.

Ground 2: *At February 2020 Senate Estimates, the Treasury said the ABGF would fill a 'funding gap' for Small and Medium-Sized Enterprises. A funding gap means no competitors, and no competitors means no detriment under section 45 as set out in the decision (which refers to ABGF competitors).*

The policy objective of the ABGF is to support funding to small and medium-sized enterprises. I do not accept your absolute statement that a funding gap means there are no competitors, and no competitors means no detriment under section 45. Consultation objections from ABGF shareholders with respect to your FOI request indicate that in their view there would be detriment. In addition, the complaint in December 2020 by a private equity funder, your own company, OnMarket BookBuilds Pty Ltd, to the Australian Government Competitive Neutrality Complaints Office (**AGCNCO**) alleging breach of the Commonwealth competitive neutrality indicates the possibility of at least one competitor.

Ground 3: *The 'unreasonable adverse effect' test under s 47G(1)(a) is not satisfied because the documents do not contain trade secrets but rather generic information which would not have the requisite degree of adverse effect on big bank shareholders because of the small level of capital investment in the ABGF measured against the bank shareholders' overall capitalisation.*

I consider that the entities anticipated to receive an adverse effect from disclosure of the relevant documents are best placed to identify the existence and extent of any such effect. The consultation responses from ABGF shareholders consistently identify such adverse effect. The test of reasonableness applies not to the claim of harm but to the decision maker's objective assessment of the expected adverse effect, balancing public and private interests¹.

In this case, the original decision maker found that disclosing information with this character of commercial confidentiality would unreasonably interfere with the legitimate entitlement of the ABGF and its shareholders to conduct their affairs in privacy, as they do with their other commercial investments. However, it is unnecessary for me to take discussion of the section 47G exemption further, as I have decided, for the reasons outlined below, to apply section 47(1)(b) of the FOI Act to exempt the material in lieu of section 47G(1)(a).

Ground 4: *Neither document possesses the 'quality of confidentiality' for the purposes of exemption under section 45 because their confidentiality clauses typically include permitted disclosures to a lawful request by a Government agency (for example, by the Office of the Australian Information Commissioner (OAIC)), or as required by law (the FOI Act being such a law).*

A mandatory disclosure to a regulatory authority such as OAIC for a restricted purpose (administration of a review function under the FOI Act) cannot be compared to a disclosure of non-exempt material to the world at large for any purpose. There is no general requirement of disclosure of documents under the FOI Act. The FOI Act does not require disclosure of an exempt document². To find otherwise would mean that the potential of disclosure under FOI could never give rise to a breach of confidence, and therefore section 45 would be stripped of meaning and have no work to do.

Ground 5: *There is an overriding public interest in understanding whether (1) lawmakers were misled when the ABGF increased its investee minimum revenue threshold from \$2 million to \$10 million for eligibility for ABGF investment, contrary to the \$2 million investment threshold approved by Parliament or (2) whether the shareholders agreement (document 1) was so negligently drafted as to ignore Parliament's intentions for the ABGF.*

While there might be public discussion about the threshold increase, the relevant documents in this internal review do not speak to that issue and therefore this is not a relevant public interest factor about the release or otherwise of these documents.

Ground 6: *There is an overriding public interest in understanding whether the ABGF bank shareholders have breached their investment mandate in the ABGF of up to 2% of their Common Equity Tier 1 (CET1) capital, specially permitted by APRA in 2019, because of the ABGF having increased its revenue minimum threshold from \$2 million to \$10 million.*

There may be a public interest in whether the increase in the ABGF's minimum revenue threshold constitutes a 'substantial change' to the ABGF's purpose and investment mandate sufficient to warrant reconsideration by the Australian Prudential Regulation Authority (APRA) of its permission to the banks to invest up to 2% of their respective CET1 capital in the ABGF. However, the respective bank shareholders' capital contributions to the ABGF are all publicly known by virtue of the Treasurer's media releases on

¹ FOI Guidelines at paras [6.187] and [6.188]

² Section 11A(4) *Freedom of Information Act 1982*

27 November 2019 and 16 October 2020. The public disclosure of the ABGF shareholders agreement and key terms is therefore not going to inform any debate about this issue beyond what is already publicly known.

Grounds 7 to 10: *Paragraph [6.123] of the FOI Guidelines provides that the exemption under section 47G(1)(a) cannot apply if the documents reveal a business' unlawful activities, specifically:*

(A) APRA breached section 8 of the Australian Prudential Regulation Authority Act 1998 by failing to consider competitive neutrality in the discharge of its functions and powers with respect to the ABGF,

(B) The Government will breach the Government Competitive Neutrality Policy 1996 if the documents evidence the Government using its regulatory power in favour of the ABGF, and

(C) The documents 'raise concerning questions' about breaches by the shareholders and the ABGF of the restrictive trade practices, cartel conduct and abuse of market power provisions of Part IV of the Competition and Consumer Act 2010 (CAC Act).

It is clear from caselaw³ that unlawful activity for the purposes of paragraph [6.13] of the FOI Guidelines requires a threat to public safety or serious criminality. Your submissions do not raise issues of this kind. Further, a mere assertion of illegal activity does not make it so, for the purposes of preventing the application of the section 47G(1)(a) exemption.

In this respect, I note the recent findings of the AGCNCO draft report regarding your company's competitive neutrality complaint that the ABGF has not breached the *Commonwealth Competitive Neutrality Policy 1996*. Further, I am unaware of any complaint or charges with respect to breaches of Part IV of the CAC Act which would warrant the finding of exemption under section 47G(1)(a) being inappropriate in this instance.

However, again, it is unnecessary for me to make further comment on the application of the section 47G exemption, as I have decided, for the reasons outlined below, to apply section 47(1)(b) of the FOI Act to exempt the material in lieu of section 47G(1)(a).

Ground 11: *There is no prejudice to the future supply of information to the Commonwealth as the requirements of section 47G(1)(b) are not met.*

The Treasury frequently consults with financial industry organisations to assist the development of economic and fiscal policy. The consultation responses from the ABGF stakeholders clearly indicate a future reluctance by the shareholders to assist the Treasury with any of their commercial-in-confidence information, should the documents in this FOI request be disclosed.

The section 47G(1)(b) conditional exemption comprises two parts: (1) a reasonable expectation of a reduction in the quantity or quality of business affairs information to the government and (2) the reduction will prejudice the operations of the agency⁴. When an agency seeks the views of their stakeholders, as in its consultation on this FOI request, the agency's decision maker must make an objective assessment of the strength or otherwise of the evidence for objection provided by its stakeholders. If the decision maker

³ *Re Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* [1992] FCA 241; (1992) 108 ALR 163 (1992) 36 FCR 111 (27 May 1992) at para [52]; *Bell and Secretary, Department of Health* (Freedom of information) [2015] AATA 494 (9 July 2015) at para [38].

⁴ FOI Guidelines at para [6.198]

considers that the objections have merit, they are entitled to believe and rely on the answers from its consulted stakeholders that the agency receives. The Treasury has done so in this case. This entitlement to accept and rely on third party consultation responses is recognised by the FOI Guidelines. Paragraph [6.201] provides that the agency will usually be best placed to identify, and be concerned about, the circumstances where the disclosure of documents might reasonably be expected to prejudice the future supply of information to it.

However, as explained below, I consider that the exemptions under sections 47D and 47E(d) are more appropriate than the section 47G(1)(b) exemption in this instance to capture the full extent of the harm to the Treasury's operations and the Commonwealth's commercial ventures that would result from the disclosure of the relevant documents.

Ground 12: *A request for full waiver and reimbursement of the charge on the ground that, while the estimate amount is accepted as fair, the decision does not indicate the charged work was actually undertaken with respect to (1) examining all of the material (2) no redactions were made as off the material was fully exempted. On that basis, five hours to process the request is a more reasonable time.*

Part 1 of your request sought the *November 2019, Heads of Agreement or Memo of Understanding, or other such document that sets out the "agreed terms" referred to in media release*. This involved a search for extraneous documents as well as the specific heads of agreement, or memorandum of understanding. The search involved two departmental officers as well as clearance by senior officers to confirm documents 1 and 2 as the correct documents within scope of your request. I consider that the charge of three hours for cumulative departmental officer time for search and retrieval of documents was reasonably incurred.

The seven other AGBF shareholders were consulted in relation to the release or otherwise of the relevant documents. OAIC has long recognised that two hours per consultation is a reasonable time for agencies to conduct third party consultations. The charge of two minutes to examine the relevant material (167 pages) sits at the lower end of the accepted range (one to five minutes) for this task.

Despite your assertions to the contrary, I am satisfied that the original decision maker reviewed all of the material, not just the confidentiality clauses in each document. It is incorrect to suggest that there is no entitlement to charge for tasks such as reading all of the relevant material just because the decision does not discuss the contents of the documents in their entirety in any particular detail.

In this respect, please be aware that section 26(2) of the FOI Act provides that decision letters on access to documents are not required to include information which would render the decision letter itself an exempt document. For this reason, neither the original decision, nor my internal review decision here, discuss the contents of the relevant documents in any great detail, so as to avoid disclosing exempt information.

Finally, a charge of three hours to write a decision letter fits within accepted norms. I am therefore satisfied that the charge was correctly calculated and reasonably incurred.

However, section 29(5) of the FOI Act also requires decision makers, in determining whether to waive or reduce a charge, to consider whether (a) paying the charge would cause financial hardship and (b) whether the giving of access to the relevant documents is in the general public interest or in the interest of a substantial section of the public. I have accordingly addressed these matters after my reasons for exemption decision set out below.

Reasons for decision - exemptions

Section 45 – Material provided in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure would give rise to an action, by a person (other than an agency or the Commonwealth), for a breach of confidence.

To found an action for breach of confidence (which means section 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- it must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information would, has, or will cause detriment.

As indicated in the original decision, and as you have raised in your internal review submissions, both the ABGF shareholders agreement (document 1), and ABGF key terms (document 2) contain confidentiality clauses. These clauses include confidentiality in the documents themselves, as well as the material, activities and circumstances of ABGF operations which the ABGF shareholders have mutually agreed are to be treated as confidential.

I am satisfied that the information in the relevant documents was communicated in a mutual understanding of confidence between the ABGF shareholders and the ABGF itself. These entities were consulted on the potential release of the relevant documents and they have strongly objected to their release. I therefore find, for the purposes of section 45, that there is a threatened disclosure of the information without authority.

The confidentiality provisions of the Shareholders Agreement and the ABGF Key Terms specify the limited scope pursuant to which the information can be disclosed. These contractual confidentiality obligations are ongoing. As discussed above regarding Ground 4 in your internal review submissions, I do not accept that there are any present circumstances or exceptions to the assertion of ongoing confidentiality. I therefore consider that disclosure of the confidential information by the Commonwealth in the circumstances of your FOI request is not permitted by the Key Terms or the Shareholders Agreement and would cause detriment to the ABGF as an entity, as well as to the non-Government shareholders, by affording unreasonable scrutiny of their private and confidential business affairs.

In this respect, the FOI Guidelines provide⁵ that detriment takes many forms, such as threat to health or safety, financial loss, embarrassment, exposure to ridicule or public criticism. It is sufficient that detriment in some form is a likely outcome to the party to whom the obligation of confidence is owed, as I have found. I therefore do not accept your argument that the comparatively small capital investment in the ABGF by the private sector shareholders as against their overall capitalisation means that there would be no real detriment to these organisations from disclosure of the relevant documents.

⁵ FOI Guidelines at para [5.171]

I consequently find that disclosure of any part of documents 1 and 2 would found an action by those non-Government parties for breach of confidence by the Commonwealth. I have, therefore, decided to affirm the original decision that documents 1 and 2 are exempt in full under section 45 of the FOI Act.

Section 47(1)(b) – commercially valuable information

After considering the third party consultation responses, I consider that the exemption under section 47(1)(b) of the FOI Act is more appropriate in this instance than the exemption under section 47G of the FOI Act. Section 47(1)(b) provides that a document is exempt if it contains information with a commercial value that would, or could reasonably be expected to be, diminished or destroyed by disclosure.

To be exempt under s 47(1)(b) a document 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.⁶

The FOI Guidelines further provide:

It is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have ‘exchange value’, in the sense that it can be sold as a trade secret or intellectual property. The following factors may assist in deciding in a particular case whether information has commercial value:

- *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*
- *whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors*
- *whether a genuine ‘arm’s-length’ buyer would be prepared to pay to obtain that information*
- *whether the information is still current or out of date (out of date information may no longer have any value)*
- *whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.⁷*

The relevant material comprises contractual documents in the form of a joint investment venture between the ABGF and its shareholders, the Commonwealth and six banks. As indicated in the original decision, the documents contain commercially sensitive information about the proposed (and actual) constitution and draft business plan. This includes information about deal structuring and origination strategies,

⁶ FOI Guidelines at para [5.204]

⁷ FOI Guidelines at para [5.205]

assumptions underlying the ABGF's proposed investment model, return targets, internal risk assessments and key performance indicators.

Further, I note that these documents are the product of long negotiation between the ABGF shareholders, are currently relevant to their commercial arrangements and operations, and were drafted by each party's lawyers at cost to the shareholders. I consider that this information has a commercial value to the ABGF shareholders, as indicated in their third-party consultation responses. Considering their objections, I am satisfied that this commercial value would be destroyed or diminished by disclosure by affording competitors of the ABGF an unfair insight into its business practices and strategies.

I also consider that it is unfair to financial industry stakeholders to enable the public to be able to 'piggyback' via the FOI process to gain access to the products of expert confidential commercial legal advice those stakeholders have received and in which they maintain intellectual property rights. I have therefore decided that documents 1 and 2 are exempt in full under section 47(1)(b) of the FOI Act.

Section 47D – prejudice to commercial interests of the Commonwealth

Section 47D conditionally exempts documents where disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or an agency.

The financial or property interests of the Commonwealth or an agency may relate to assets, expenditure or revenue-generating activities. An agency's property interests may be broader than merely buildings and land, and include intellectual property or the Crown's interest in natural resources.⁸ A substantial adverse effect may be indirect⁹ and the substantial adverse effect must bear on the actual financial or property interests of the Commonwealth or agency.¹⁰

In this case, the Commonwealth's investment as a shareholder investor in the ABGF is a financial interest of the Commonwealth for the purposes of section 47D. The Commonwealth shares proprietary interest in the intellectual property of the legal documents comprising documents 1 and 2. As discussed with the section 47(1)(b) exemption, third party consultation responses from the other ABGF shareholders similarly claim a proprietary interest in the documents as part of their objections to disclosure, noting that the value of the intellectual property would be destroyed by public disclosure through FOI.

Further, the Commonwealth's participation in the ABGF is as a commercial investor in a revenue-generating enterprise with the expectation of a financial return on investment. As discussed above, the relevant documents include information about deal structuring and origination strategies, assumptions underlying the ABGF's proposed investment model, return targets, internal risk assessments and key performance indicators. The disclosure of these documents would give competitors of the ABGF an insight into the structure and mechanics of the ABGF's operations which those competitors could use to their advantage in the capital funding marketplace to the detriment of, and diminished financial returns to, the ABGF and its shareholders. I consider this outcome would have a substantial adverse effect on the financial interests of the Commonwealth.

After considering third party consultation responses, I also find that the documents contain a level of sensitivity that, if disclosed, would result in a real risk of consulted ABGF third parties losing trust in the

⁸ FOI Guidelines at para [6.90]

⁹ FOI Guidelines at para [6.91]

¹⁰ FOI Guidelines at para [6.94]

Commonwealth's ability to handle commercial-in-confidence information, and becoming reluctant or unwilling to share their sensitive commercial information with the Commonwealth in the continuing operations of the ABGF.

I further consider that disclosure of the documents would also likely lead to a future reluctance by similar parties to consider being involved in joint ventures of this nature with the Commonwealth for fear of exposure of their confidential business information to scrutiny by their competitors and the public at large. This, in my view, would also have a substantial adverse effect on the financial interests of the Commonwealth.

I therefore find that the documents are conditionally exempt in full under section 47D of the FOI Act. 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. My public interest considerations are set out below.

Section 47E(d) – agency operations

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

The Treasury routinely consults with financial industry stakeholders, including the ABGF shareholders, in carrying out its broad functions to develop fiscal and economic policy advice to the Government. As discussed above, third party consultation responses from ABGF shareholders have made clear that a release of the relevant documents in this instance would diminish industry trust in the Treasury's ability to handle confidential material to such an extent that these stakeholders would in future be unwilling or reluctant to share their commercial information, opinions and advice for fear of public exposure of their business affairs.

One of the Treasury's core functions is to provide information, recommendations and advice to the Treasurer to assist his decision-making in the discharge of his portfolio obligations and functions. Such advice is underpinned by industry stakeholder consultation responses on various fiscal and economic proposals. It follows that a reluctance by industry to assist the Treasury's fiscal and economic policy proposals would diminish the quality of its advice to the Treasurer. This, in turn, would adversely impact the Treasurer's evidence-based decision making.

These outcomes would have a substantial adverse effect on the proper and efficient conduct of the Treasury's operations. I am therefore satisfied that documents 1 and 2 are conditionally exempt in full under section 47E(d) of the FOI Act. My considerations of the public interest in the release of this conditionally exempt material are set out below.

Public Interest

As indicated, 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. I have not taken into account any of the matters set out in section 11B(4) of the FOI Act.

In favour of disclosure, I consider that access to the information in the documents would promote the objects of the FOI Act in respect of providing access to Government-held information (section 3(1)(b)), and, in this case, inform public debate on the Australian Business Growth Fund. I also consider that disclosure of the documents would increase scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b)). In this respect, I note that the Government has made public a substantial amount of information about the operation of the ABGF and the Government's participation in it.

Against disclosure, I have considered the public interest in protecting taxpayers' money as used by the Commonwealth in its commercial joint ventures, both with the ABGF and in future projects. I have also considered the importance of maintaining the flow of information from industry stakeholders with respect to both the Commonwealth's commercial ventures and the Treasury's development of fiscal and economic policy proposals. I have considered how the disclosure of these documents would put the ABGF at a competitive disadvantage, with the likely consequent diminishment of financial returns to the Commonwealth as a shareholder. I have also considered the significant public interest in maintaining the trust of industry stakeholders in the Commonwealth's ability to responsibly handle commercial-in-confidence information.

On balance, I consider that the public interest factors against release of the conditionally exempt material outweigh the factors favouring release, and that release would be contrary to the public interest. I have therefore decided that documents 1 and 2 are exempt in full under sections 47D and 47E(d) of the FOI Act.

Reasons for decision - charges

As indicated, section 29(5) of the FOI Act also requires decision makers, in determining whether to waive or reduce a charge, to consider whether (a) paying the charge would cause financial hardship and (b) whether the giving of access to the relevant documents is in the general public interest or in the interest of a substantial section of the public.

Section 29(5)(a) - Hardship

As you have not indicated that the charge would cause you financial hardship, and you have paid the charges in full, I have not considered this factor in my decision. I have therefore confined my review of the charges on whether they should be reduced or waived on public interest grounds.

Section 29(5)(b) – public interest

The FOI Guidelines provide that the public interest in section 29(5)(b) is different to the public interest test in section 11A(5) that applies to conditionally exempt documents¹¹, as set out in my exemption reasons above. Section 29(5)(b) will not be satisfied only by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency is in the public interest.¹² Further, an applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that will benefit from this disclosure (s 29(1)(f)(ii)).¹³

¹¹ FOI Guidelines at para [4.106]

¹² FOI Guidelines at para [4.106]

¹³ FOI Guidelines at para [4.107]

In this case, you have advanced no arguments why the charge should be waived or reduced because of a broad public interest in the subject matter of this material. Nevertheless, as required by the FOI Guidelines,¹⁴ I have considered both the content of the documents requested and the context in which their public release would occur. This has included consideration of whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents. After considering the age, content and context of the documents, I do not believe there is a broad public interest in the documents.

I also recognise that the FOI Act supports some cost recovery of FOI processing costs by applicants in relation to requests that take over 5 hours to process, and requests that are not for an applicant's personal information. In this case, the processing of your request to initial access decision has been completed at the expenditure of in excess of 20 hours of time by departmental officers. In this respect, I note my detailed explanation above of the Treasury's time taken to process your request. On balance, taking into account the information before me my decision is to not waive or otherwise alter the charge.

Rights of Review

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

Yours sincerely

Meghan Quinn
Deputy Secretary
Markets Group

¹⁴ FOI Guidelines at para [4.107]

INFORMATION ON RIGHTS OF REVIEW

1. 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

2. 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.