

From: FOI
Sent: Friday, 19 August 2016 4:06 PM
To: 'Hannock, Lillian (A. Leigh, MP)'
Subject: FOI REQUEST NO 1935: DECISION LETTER [SEC=UNCLASSIFIED]
Attachments: FOI 1935 Decision letter.pdf

Dear Ms Hannock.

Please find attached correspondence relating to your above FOI request recently lodged with this department.

Kind regards

FOI Team

Parliamentary and Legal Services Unit

Financial and Parliamentary Division

The Treasury, Langton Crescent, Parkes ACT 2600

Phone: (02) 6263 2800

Email: FOI@treasury.gov.au



19 August 2016

FOI ref: 1935

Ms Lilly Hannock
Office of the Hon Dr Andrew Leigh MP

Lillian.Hannock@aph.gov.au

Dear Ms Hancock

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your FOI request to this department dated 20 July 2016. Your request reads as follows:

Please provide copies of pages from any draft versions of the 2016 Budget papers which included reference to thin capitalisation taxation measures.

I am an authorised decision maker under section 23 of the *Freedom of Information Act 1982* (the Act).

Decision

In short, I have decided to refuse your request.

Where an agency is refusing to provide access to material requested by an applicant, the agency is required by section 26(1) of the Act to provide the applicant with a statement setting out, amongst other things, the reasons for the decision. However, section 26(2) provides that a statement under that section is *not* required to contain any matter which would render it (the statement) an exempt document under the Act.

I have decided that the inclusion in this notice of any matter which would either confirm or deny that a document such as the one requested by you is in the possession of the department, would make this statement an exempt document under the Act.

Rights of Review

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

Yours sincerely

Robert Raether
A/g Division Head
Corporate and International Tax Division

RIGHTS OF REVIEW, WHERE CHARGES IMPOSED

INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision to impose a charge for documents in accordance with your request.

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.

Application for a review of the decision should be addressed to:

The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Parliamentary and Legal Services Unit

OR

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

Section 54L of the 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.

Applications 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 Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

AND/OR

3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the 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 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 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.

From: Hannock, Lillian (A. Leigh, MP) <Lillian.Hannock@aph.gov.au>
Sent: Wednesday, 20 July 2016 2:06 PM
To: FOI
Subject: FOI request

Follow Up Flag: Follow up
Flag Status: Flagged

Dear FOI Coordinator,

This is a request for documents under the *Freedom of Information Act*.

Please provide copies of pages from any draft versions of the 2016 Budget papers which included reference to thin capitalisation taxation measures.

Please feel free to contact me at any time if you wish to clarify or discuss any aspect of this request.

Warm regards,

Lilly Hannock
Office of Dr Andrew Leigh MP
Ph (EO): (02) 6247 4396
MOB: 0402 189 188
E: Lillian.Hannock@aph.gov.au

From: FOI
Sent: Thursday, 28 July 2016 11:46 AM
To: 'Hannock, Lillian (A. Leigh, MP)'
Subject: Acknowledgement - FOI request No. 1935 [SEC=UNCLASSIFIED]

Dear Ms Hancock

We would like to acknowledge receipt of your FOI request to this department dated 20 July 2016. Your request reads as follows:

'Please provide copies of pages from any draft versions of the 2016 Budget papers which included reference to thin capitalisation taxation measures.'

Your request will be processed as soon as possible.

If you have any questions in relation to your application, please contact the FOI Team on 02 6263 2800.

Kind regards

FOI Team

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600

Phone: (02) 6263 2800
Email: foi@treasury.gov.au

From: Hannock, Lillian (A. Leigh, MP) [<mailto:Lillian.Hannock@aph.gov.au>]
Sent: Wednesday, 20 July 2016 2:06 PM
To: FOI
Subject: FOI request

Dear FOI Coordinator,

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Warm regards,

Lilly Hannock
Office of Dr Andrew Leigh MP
Ph (EO): (02) 6247 4396
MOB: 0402 189 188
E: Lillian.Hannock@aph.gov.au

Section 22

From: Section 22
Sent: Friday, 22 July 2016 6:06 PM
To: Section 22
Cc: Section 22
Subject: RE: Initial FOI request [SEC=UNCLASSIFIED]

Section 22 Hi ²² yes, I agree with Section 22 that this is one for my Division but we will liaise with Section 22

Section 22 will be the action officer.

Thanks

Section 22

From: Section 22
Sent: Thursday, 21 July 2016 2:53 PM
To: Section 22
Subject: Initial FOI request [SEC=UNCLASSIFIED]

Section 22
Hi

As per ^{Section 22} email below can you confirm that this FOI request belongs to your Division.

If yes please advise who the Action Officer will be.

thanks

Section 22

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600
P 61 2 6263 ^{Section 22}



From: Section 22
Sent: Thursday, 21 July 2016 2:51 PM
To: Section 22
Subject: RE: Initial FOI request [SEC=UNCLASSIFIED]

Section 22 - I think it is better handled by ^{Section 22} as the primary contact, who can then liaise with ^{Section 22} as necessary.

Thanks

Section 22

From: Section 22
Sent: Thursday, 21 July 2016 2:48 PM

To: Section 22
Cc: FOI Team
Subject: Initial FOI request [SEC=UNCLASSIFIED]
Importance: High

Good afternoon

The department has received a new FOI request from Lilly Hannock, Office of Dr Andrew Leigh MP. We would be grateful for your confirmation that your Division is the appropriate area to action it. Should that be the case, your early advice as to who the action officer will be would also be appreciated. We will then forward to that officer relevant information and advice as to what is required of him or her.

Regards

Section 22

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600
P 61 2 6263^{Section}₂₂

From: Hannock, Lillian (A. Leigh, MP) [<mailto:Lillian.Hannock@aph.gov.au>]
Sent: Wednesday, 20 July 2016 2:06 PM
To: FOI
Subject: FOI request

Dear FOI Coordinator,

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Warm regards,

Lilly Hannock
Office of Dr Andrew Leigh MP
Ph (EO): (02) 6247 4396
MOB: 0402 189 188
E: Lillian.Hannock@aph.gov.au

From: Section 22
Sent: Monday, 25 Julv 2016 11:30 AM
To: Section 22
Cc: Section 22
Subject: Initial FOI request [SEC=UNCLASSIFIED]
Attachments: FOI request; 041 - Initial Schedule of documents.xlsx; 030 - Exemptions list.pdf

Good morning ^{Section 22}

A new FOI request has been received by the department and has been referred to your Division. We have been advised that you have been appointed the Action Officer in relation to the request. To assist you in the performance of your duties I have attached the following documents:

- Initial schedule of documents
- Exemptions list
- Request

The due date for this request is, at the moment, **19 August 2016**. This may end up changing – for instance, if consultations with third parties become necessary or if extensions of time are obtained from the applicant or the Office of the Australian information Commissioner.

Should the request be unclear, or should you need clarification from the applicant as to exactly what documents he or she is seeking, please let us know as soon as possible. We will then seek such clarification from the applicant. The 30 day period, within which the department must take all reasonable steps to advise the applicant of a decision, will not commence until it is perfectly clear what documents the applicant is seeking.

We will then need to establish, as matter of priority, whether the department will be able to process the request or whether it is too large. The Act provides that a request can be refused if its processing would necessitate a substantial and unreasonable diversion of the agency's resources. We can provide advice as to the criteria that need to be met before such a decision can be made.

Please let us know at your earliest convenience as to when you and any other relevant officers in your area would be available for an early meeting with our team to discuss, firstly, whether the request is clear, secondly, whether it can be processed and, if so, what the next steps in that process will be.

Kind regards

Section 22

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600
P 61 2 6263 ^{Section}₂₂



From: ^{Section 22}
Sent: Friday, 22 July 2016 6:06 PM
To: ^{Section 22}
Cc: Section 22
Subject: RE: Initial FOI request [SEC=UNCLASSIFIED]

Hi ^{Section}₂₂ yes, I agree with ^{Section}₂₂ that this is one for my Division but we will liaise with ^{Section}₂₂

^{Section}₂₂ will be the action officer.

Thanks

^{Section}₂₂

From: ^{Section}₂₂
Sent: Thursday, 21 July 2016 2:53 PM
To: ^{Section}₂₂
Subject: Initial FOI request [SEC=UNCLASSIFIED]

Hi ^{Section}₂₂

As per ^{Section}₂₂ email below can you confirm that this FOI request belongs to your Division.

If yes please advise who the Action Officer will be.

thanks

^{Section}₂₂

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600
P 61 2 6263 ^{Section}₂₂



From: ^{Section}₂₂
Sent: Thursday, 21 July 2016 2:51 PM
To: ^{Section}₂₂
Subject: RE: Initial FOI request [SEC=UNCLASSIFIED]

^{Section}₂₂ – I think it is better handled by ^{Section}₂₂ as the primary contact, who can then liaise with ^{Section}₂₂ as necessary.

Thanks

^{Section}₂₂

From: ^{Section}₂₂
Sent: Thursday, 21 July 2016 2:48 PM
To: ^{Section}₂₂
Cc: FOI Team
Subject: Initial FOI request [SEC=UNCLASSIFIED]
Importance: High

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Section 22

Parliamentary and Legal Services Unit
Financial and Parliamentary Division
The Treasury, Langton Crescent, Parkes ACT 2600
P 61 2 6263^{Section}₂₂

From: Hannock, Lillian (A. Leigh, MP) [<mailto:Lillian.Hannock@aph.gov.au>]
Sent: Wednesday, 20 July 2016 2:06 PM
To: FOI
Subject: FOI request

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Warm regards,

Lilly Hannock
Office of Dr Andrew Leigh MP
Ph (EO): (02) 6247 4396
MOB: 0402 189 188
E: Lillian.Hannock@aph.gov.au

Exemptions

Section of the Act	Description
33	Documents affecting national security, defence or international relations
34	Cabinet documents
37	Documents affecting enforcement of law and protection of public safety
38	Documents to which secrecy provisions of enactments apply
42	Documents subject to legal professional privilege
45	Documents containing material obtained in confidence
46	Documents disclosure of which would be contempt of Parliament or contempt of court
47	Documents disclosing trade secrets or commercially valuable information
47A	Electoral rolls and related documents

Conditionally exempt documents – Public interest

(Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest)

Section of the Act	Description
47B	Public interest – Commonwealth-State relations
47C	Public interest – deliberative processes
47D	Public interest – financial or property interests of the Commonwealth
47E	Public interest – certain operations of agencies
47F	Public interest – personal privacy
47G	Public interest – Business Affecting business affairs Monetary value
47H	Public interest – research
47J	Public interest – the economy

Section 11B

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of *exempt document* in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.