

Section 22

From: Section 22
Sent: Wednesday, 3 December 2014 12:00 PM
To: Section 22
Subject: FW: FOI 1618 - Blair Davies (Australian Taxi Industry Association) - ER2014/05431 [SEC=UNCLASSIFIED]
Attachments: TRIM: FOI 1618 - Revised Scope - ER2013/05431 [SEC=UNCLASSIFIED]; 1618 - Schedule of all documents.xlsx; 050 - Schedule of all documents (Sample).pdf; 030 - Exemptions list.pdf

FYI.

Section 22

Competition Policy Review Secretariat
 The Treasury, Langton Crescent, Parkes ACT 2600
 phone: 02 6263 Section 22 mobile: Section 22
 email: Section 22 [@treasury.gov.au](mailto:Section22@treasury.gov.au)

From: Section 22
Sent: Wednesday, 3 December 2014 11:59 AM
To: Section 22
Cc:
Subject: FOI 1618 - Blair Davies (Australian Taxi Industry Association) - ER2014/05431 [SEC=UNCLASSIFIED]

Good morning

We have received a revised request from Mr Davies. Could you please advise if this can be processed and if so we will need to issue charges as soon as possible. To enable us to do this will need to prepare the schedule of documents, and/or forward us an estimate of the following:

- Number of relevant pages
- Number of documents
- Number of fully exempt pages
- Number of pages released with deletions
- Number of third parties to consult

From these the FOI team will prepare a charges letter. (Exemption numbers are not required at the charges stage).

To assist you with processing the FOI I have attached with following documents:

- Schedule of Documents (incl example)
- Exemptions list
- Revised request

We have used 16 days of the 30 days allowed to process this application. Once charges are issued the clock stops until payment is received. The due date for this FOI, if charges are paid immediately, is **12 December 2014**. (this is because we issue our decisions on a Friday).

Also, if you identify Cabinet Documents in the schedule, you need to prepare a separate schedule of the cab docs and notify the FOI team asap as these documents need to go to PM&C (PM&C require up to **2 weeks** to process).

When we have received a payment we will advise you of the next steps. We will provide you with updates and reminders along the way.

Kind regards

Section 22

Page 1 of 1

Analyst

Ministerial & Legal Team

Ministerial & Communications Division

Corporate Strategy and Services Group

The Treasury, Langton Crescent, Parkes ACT 2600

phone: (02) 6263 Section 22

email: Section 22 [@treasury.gov.au](mailto:Section22@treasury.gov.au), or

Section 22 [@treasury.gov.au](mailto:Section22@treasury.gov.au)

From: Section 22
Sent: Wednesday, 3 December 2014 8:55 AM
To: Section 22
Subject: FOI 1618 - Revised Scope - ER2013/05431 [SEC=UNCLASSIFIED]

Please see the below email from the applicant revising the scope of the request for FOI 1618.

From: Blair Davies [mailto: @atia.com.au]
Sent: Tuesday, 2 December 2014 6:25 PM
To: FOI
Subject: Re: Freedom of Information Request to Treasury [SEC=UNCLASSIFIED]

Dear Sir/Madam

Thank you for the email below and attachment.

Further to my phone conversation with ^{Section 22} Senior Adviser - Parliamentary and Legal Services Unit, today (02/12/14: 1414-1445 AEDST), I confirm the following -

1. Subject to the Commonwealth Treasury Department confirming in writing that a large number of documents *will in fact* fall within the scope of Part 2 of my Freedom of Information Request (FOI Ref 1618), I wish to amend Part 2 of my request by restricting its scope to the Competition Policy Review Panel and Secretariat rather than the whole Commonwealth Treasury Department.
2. Subject to the Commonwealth Treasury Department confirming in writing that a large number of documents *will in fact* fall within the scope of Part 2 of my Freedom of Information Request (FOI Ref 1618), as amended in point 1 above, I wish to withdraw Part 2 of my request entirely.
3. Please note, ^{Section 22} letter dated 28 November 2014 only states that, "initial searches *suggest* that a large number of documents *could* fall within the scope". As currently framed, ^{Section 22} intention to refuse Part 2 of FOI Ref 1618 appears to represent unsatisfactory compliance with her obligations under the Freedom of Information Act 1982.
4. I confirm that on 14 November 2014, I called the Competition Policy Review secretariat to make enquiries about the drafting Box 1.1 in the Competition Policy Review draft report (September 2014). ^{Section 22} (?) returned my call the same day (14/11/14: 15.31-1554 AEDST) and advised the following --
 - o Box 1.1 was drafted by a "person near him";
 - o the drafter was unavailable to answer enquiries;
 - o the drafter did not rely on any submission to draft Box 1.1 because any such source would have been acknowledged if that had been the case;
 - o the drafter rather relied on the "general understanding" of the matters presented in Box 1.1 and not any specific sources (e.g. particular media reports) or representations (e.g. meetings with Uber) or experiences (e.g. using or supplying Uber products);
5. The advice provided in relation to Part 1 of FOI Ref 1618 by ^{Section 22} in her letter is not consistent or reconcilable with the advice provided by ^{Section 22} Whereas ^{Section 22} advised that Box 1.1 was prepared without reliance on specific submission material, reference material or media reports, ^{Section 22} letter states that, "*four source documents used in the preparation of Box 1.1.*" On inspection the documents ^{Section 22} letter refers to comprise -
 - o 1 submission (NSW Government);
 - o 1 overseas document (CPUC); and
 - o 2 media reports (SMH articles).

6. While Section 22 letter may have provided an appropriate answer to my enquiry of Section 22 (?) on 14 November 2014, it is not at all satisfactory as a response to Part 1 of FOI Ref 1618. Please note, Part 1 of FOI Ref 1618 includes *all records* in relation to the preparation and publishing of Box 1.1. Importantly, it therefore includes all communications in relation to the preparation and publishing of Box 1.1. It also includes all drafts and revisions of Box 1.1. The supply of the 4 references is manifestly incomplete for the purposes of the scope of FOI Ref 1618.
7. As currently presented, Section 22 intention to refuse Part 1 of FOI Ref 1618 also appears to represent unsatisfactory compliance with her obligations under the Freedom of Information Act 1982.
8. For completeness, I confirm that I do *not* wish to revise Part 1 of FOI Ref 1618.

Regards

Blair Davies
CEO
Australian Taxi Industry Association

m: Section 47F
p: +61 7 3467 3560
f: +61 7 3054 7227
a: PO Box 1388, North Lakes QLD 4509
e: Section 47F [@atia.com.au](mailto:Section47F@atia.com.au)
w: www.atia.com.au



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On 28 Nov 2014, at 3:30 pm, FOI <FOI@treasury.gov.au> wrote:

Dear Mr Davies

Please find attached correspondence in relation to your FOI request of 14 November 2014.

Regards

FOI Team
Parliamentary and Legal Services Unit
Ministerial and Communications Division
The Treasury, Langton Crescent, Parkes ACT 2600
Phone: (02) 6263 2800
Email: foi@treasury.gov.au

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<FOI 1618 Letter to Mr Davies.pdf>

THE TREASURY

Schedule of documents – FILE Ref

Doc No	Author	Addressee	Date	Description	No of pages	Release	Exempt in Part	Exempt in Full	Not Relevant S22
1	Joe Bloggs	Jane Doe	xx/xx/xx	Executive Minute – Topic of executive minute	7	P2-4		S45 P1	P5-7
2	Joe Bloggs	Jane Doe	xx/xx/xx	Letter – Topic of letter	3	Pp1-3	S47C Pp1-3		
3	Joe Bloggs	Jane Doe	xx/xx/xx	Report – Topic of report	23	P2, 6, 10-23, Pp 1, 3, 5	S34 Pp1, 3, 5	S34 P4, 7-9	
4	Joe Bloggs	Jane Doe	xx/xx/xx	Email – Topic of email	4	P1-4			
5	Joe Bloggs	Jane Doe	xx/xx/xx	Minute – Topic of minute	5			S34 P1-5	
6	Joe Bloggs	Jane Doe	xx/xx/xx	Newsletter – Topic of newsletter	2	P1			P2
7	Joe Bloggs	Jane Doe	xx/xx/xx	Draft Report – Topic of report	15	Pp1, 3-5	S47F Pp2 S47C Pp1, 3-5	S33 P6-15	Pp2
Total pages					59	33	11	20	5

P= Full page

Pp = Part page

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

Part III Access to documents

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.