



Office of the Hon Mary-Anne Thomas MP

Minister for Regional Development
Minister for Agriculture

121 Exhibition Street
Melbourne, Victoria 3000 Australia
Telephone: +61 3 8392 2261

Ref: 7375

Mr Peter Hunt
Journalist
The Weekly Times
40 City Rd
SOUTHBANK VIC 3006
Peter.hunt@news.com.au

Dear Mr Hunt

FREEDOM OF INFORMATION - NOTICE OF DECISION – REF: 7375

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) transferred to the Minister for Agriculture (the Minister) by VicForests on 8 April 2022 seeking access to a letter written by the Minister to VicForests regarding the recovery of costs from the MyEnvironment group.

I am authorised to respond to your request on behalf of the Minister. I apologise for the delay in providing you with this decision and thank you for your patience.

Right of access

The FOI Act provides the public with the right of access to documents held by state government agencies and official documents of ministers. However, in order to protect essential public interests, for example, the privacy of individuals and certain business affairs, this right of access does not apply to documents that are identified as exempt under the FOI Act.

The FOI Act also allows agencies and ministers to partially release documents if practicable to do so and if the applicant would wish to access such documents.

Document search

The Office of the Minister for Agriculture undertook a search and located the relevant letter from the Minister to the Chair, VicForests.

Decision

The documents were assessed in accordance with the FOI Act. Access is refused in full to the document on the following grounds:

Section 30(1) – Internal working documents

Section 30(1) has three requirements:

- (a) documents must reveal information in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers and/or Ministers,
- (b) the information must have been created in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency, the Minister or government; and
- (c) disclosure of the information must be contrary to the public interest.

In this instance, the letter has been prepared for the Minister and reveals information in the nature of opinion and advice, as well as consultation that has taken place between the Minister and VicForests. The contents of the letter have been publicly described as expressing an opinion, which satisfies the first limb of the above test. The information contained in the letter has been created during the deliberative processes involved in duties and functions relevant to the Minister's portfolio.

Release of this document is contrary to the public interest having regard to the nature of the information, the potential impacts on the integrity of the decision-making process and the confidential nature of the communication.

1. *The nature of the information*

In line with the factors described in *Howard v Treasurer Cth*¹, the higher the office of the persons between whom the communications pass and the more sensitive the issues involved in the communication, the more likely it will be that the communication should not be disclosed. The fact that the issues remain the subject of potential ongoing consideration by VicForests also weighs against disclosure.²

I also note the comments of the Victorian Civil and Administrative Tribunal (the VCAT) in finding that it would be contrary to the public interest to disclose documents that, although not subject to client legal privilege, would represent an "ongoing development of advice and policy and discussion of the litigation and possible actions being canvassed".³

¹ (1985) 7 ALD 626

² *Environment Victoria Inc v Department of Primary Industries* [2013] VCAT 39

³ *Birrell v Department of State & Regional Development* [2001] VCAT 50

2. The integrity of the decision-making process

Disclosure of the document may impact the way departmental officers provide advice to the Minister in future matters. It is imperative that the Minister can receive unfettered advice from officers to enable her to effectively discharge her duties and exercise proper decision-making powers. Disclosure of advice received would likely impact upon the ability of departmental staff to provide complex and nuanced reasoning for the Minister's consideration and subsequent sharing with agencies, which in turn would impact the integrity of decision-making processes.

This is particularly relevant to matters involving the potential use of litigation. In a similar matter involving documents related to the recovery of unpaid tax, release of the information was considered contrary to the public interest for reason that it may undermine the decision-making process.⁴

3. The confidential nature of the communication

The information provided by the Minister in this instance was communicated with an expectation of confidence. Release of this information may reduce the fulsome nature in which the Minister is prepared to comment on such matters and advice in the future may be restricted.

I consider that disclosure of this information would be contrary to the public interest for the reasons outlined above.

Waiver of access charges

The department has determined to waive any applicable access charges in relation to this matter.

Complaint or review to the Victorian Information Commissioner

If you wish to complain about an aspect of how this request was processed, or seek review of this decision, you may make a submission in writing to the Office of the Victorian Information Commissioner within 60 days of the date of the action you are complaining about, or for reviews, within 28 days from the date of decision. For further information about the process, please visit the Commissioner's website at <http://ovic.vic.gov.au> or telephone 1300 006 842.

⁴ *Roy Morgan Research Centre Pty Ltd v State Revenue Office* (unreported, VCAT, Coghlan DP, 17 June 1999)

Contact

Please feel free to contact me by email at foi@ecodev.vic.gov.au if you have any questions about this decision.

Yours sincerely

Kate Kulman

A handwritten signature in blue ink, appearing to be 'Kate Kulman', with a long horizontal stroke extending to the right.

Manager, Freedom of Information
Legal and Legislation

11/05/2022