



3 September 2021

Peter Rutherford
Via email: admin@southeasttimberassociation.com

Kathryn Dan
University Archivist, Associate
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CRICOS Provider No. 00120C

Dear Mr Rutherford,

Freedom of Information Request No. 202100047

On 28 April 2021, the Australian National University received your request on behalf of the South East Timber Association Inc. seeking access to documents under the *Freedom of Information Act 1982* (the Act).

1. Scope of Request

Your request was for:

Emails and letters between Professor David Lindenmayer and the following journalists and other parties. Media outlet names have been included to help identify relevant parties, but searches should cover multiple media outlets, where journalists have changed employers.

Jesse Graham (Mountain View Mail), Adam Morton (The Age), Katie Burgess (Canberra Times), Finbar O'Mallon (Canberra Times), Kath Gannaway (Mountain View Mail), Justin Huntsdaale (ABC), Mark Colvin (ABC), Miki Perkins (Sydney Morning Herald), Mike Foley (Sydney Morning Herald), Peter Ker (The Age), Rosslyn Beeby (Canberra Times), Les White (The Weekly Times and Consultant), Paddy Manning (ABC, SMH, The Age, The Monthly), Dominica Sanada (AAP), Lisa Cox (The Guardian), Graham Readfern (The Guardian), Michael Slezak (ABC), Andrew Wong (The Wilderness Society and ANU), Dermot O'Gorman (WWF), Tim Cronin (WWF), Dr Stuart Blanch (WWF).

The topics to be included in the search for relevant documents are Logging, Bushfires, Leadbeaters Possum, Mountain Ash, Koalas, Defamation and Green Carbon.

Date range: 1 January 2010-28 April 2021

On 10 May 2021 I wrote to you informing you that following preliminary searching, I intended to refuse your request on the grounds of 'practical refusal' as the work involved in processing the request would substantially and unreasonably divert the resources of this agency. I sought your advice on revising the scope of the request. I note that on 11 May and, after further consultation on 18 May, you agreed to revise the scope of your request to enable it to be processed by the University. I have taken your request to be as follows:

Emails and letters between Professor David Lindenmayer and the following journalists:

Miki Perkins and Mike Foley.

The topics to be included in the search for relevant documents are Logging, Bushfires, Leadbeaters Possum and Defamation.

Date range: 1 January 2015-27 April 2021.

The purpose of this letter is to provide you with a decision on your request for access under the Act.

I would like to thank you for agreeing to the extensions of time for this decision. On 28 May you were advised that the processing time would be extended by 30 days to allow for third party consultation. On 1 July you advised that you agreed to an extension of time under section 15AA of the Act. On 10 August the Office of the Australian Information Commissioner granted an extension of time under section 15AC providing a decision date of 23 August. As you are aware from correspondence on 23-24 August, the University is considered to have made a decision on that date: a 'deemed refusal' decision. Nevertheless, the University has continued to process your request in order to provide you with an outcome.

2. Authority to Make Decision

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents or to amend or annotate records.

3. Relevant Material

In reaching my decision I referred to the following:

- The terms of your request;
- Documents relevant to the request;
- The submissions of third parties consulted about documents that relate to them;
- Advice from University staff with responsibility for matters relating to the documents to which you sought access;
- The Act;
- Guidelines published by the Office of the Australian Information Commissioner (OAIC) under section 93A of the Act (the FOI Guidelines).

4. Decision

I have identified 36 documents (plus attachments) deemed to be within the scope of your request. I have decided to release documents 2b-2d, 4a-4d, 6a-6d, 7a, 8a, 9a-9g, 10a-10b, 15a-15d, 16a-16b, 17a, 20a-20b, 23a-23c, 34a-34e and 35a to you in full.

Documents 1, 3-5, 7, 8, 9, 10, 11-12, 15, 16, 17, 20, 21-23, 27-32, 34, 35 and 36 are partially exempt documents and will be released to you with exempt material deleted, for the reasons discussed below.

Documents 1a, 2a, 6, 6e, 6f, 13, 14, 18, 19, 24-26 and 33 are fully exempt documents and will not be released, for the reasons discussed below.

My findings of fact and reasons for deciding that the exemptions apply to the documents in question are set out below.

4.1 Section 22 of the Act – Irrelevant to request, impractical to provide edited version of document

Section 22 of the Act applies if:

- (a) *an agency or Minister decides:*

(i) to refuse to give access to an exempt document; or;

(ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access: and

*(b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:*

(i) access to the edited copy would be required to be given under Section 11A (access to documents on request); and

(ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request ; and

(c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:

(i) the nature and extent of the modification; and

(ii) the resources available to modify the document; and

(d) it is not apparent (from the requestor from consultation with the applicant) that the applicant would decline access to the edited copy.

I have determined that documents 5, 7, 9, 10, 22, 31, 34 and 35 contain material that is outside the scope of your request, and these parts of the documents have been redacted, in accordance with section 22 of the Act. No information, which relates to you or your request, was identified in the redacted parts of the documents. Accordingly, the information was deemed irrelevant and therefore excluded from disclosure.

4.2 Section 47F of the Act – Personal Privacy

Section 47F of the Act provides that material is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person.

The information considered exempt under this section of the Act contains the personal details and contact information of third parties. I have decided that the disclosure of this personal information would be an unreasonable disclosure of personal information about those persons.

The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in section 47F(2) of the Act. I have therefore considered each of these factors below:

- The extent to which the information is well known
- Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- The availability of the information from publicly available resources
- Any other matters that the agency or the Minister considers relevant

I am satisfied that the disclosure of the redacted information within the documents would involve an unreasonable disclosure of personal information about those individuals. This information is not available from publicly accessible sources and in a number of cases the person to whom the information relates is not known to have been associated with the matters dealt with in the document.

I have decided that the information referred to above is conditionally exempt under section 47F of the Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the

information would be contrary to the public interest and have included my reasoning in that regard below.

The Public Interest

Section 31B of the Act provides that material is exempt if it is conditionally exempt under Division 3, and access to the material would also, on balance, be contrary to the public interest for the purposes of s.11A(5) of the Act.

In applying this test, I have weighed the factors in favour of disclosure against those against it.

I have identified the following factor for disclosure:

- access to the documents would promote the objects of the Act, as described in section 3.

I have identified the following factors against disclosure:

- The disclosure of personal information which is conditionally exempt under section 47F(1) of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. The personal information which is conditionally exempt under section 47F(1) is not well known to the public generally. These documents are not available from publicly accessible sources. I have had regard to the fact that disclosure of information under the FOI Act must be considered to be a disclosure to the world at large and not just to you as the applicant.
- The University is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the University must handle and manage personal information. It is firmly in the public interest that the University uphold the rights of individuals to their own privacy and meets its obligations under the *Privacy Act 1988*. I consider that this factor weighs heavily against disclosure of the personal information contained within the document.

I have also had regard to section 11B(4) of the Act which sets out the factors which are irrelevant to my decision, which are:

- Access to the documents could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- Access to the documents could result in any person misinterpreting or misunderstanding the documents;
- The authors of the documents were (or are) of high seniority in the agency to which the request for access to the documents was made;
- Access to the documents could result in confusion or unnecessary debate.

I have not taken into account any of those factors in this decision.

Balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore the material is exempt from disclosure under the FOI Act.

4.3 Section 47G of the Act – Business information

Section 47G(1)(a) provides in the relevant part that:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or personal affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The documents considered exempt under this section of the Act contain commercial and sensitive business information in relation to the professional and business affairs of third parties. This information is not publicly available. I am satisfied that the disclosure of this information could reasonably be expected to adversely affect the third parties by undermining their ability to undertake their legitimate commercial business and professional activities.

On this basis, I consider that the documents are conditionally exempt under section 47G(1)(a) on the grounds that disclosure of the exempt material would disclose information concerning the professional affairs of third parties and would, or could reasonably be expected to, unreasonably adversely affect the third parties in respect of their lawful business, commercial and financial affairs.

For the reasons discussed above, I have decided that the documents are conditionally exempt under s 47G.

The Public Interest

Even though I have decided that the documents are conditionally exempt under section 47G, I am also required to consider whether disclosing this information would, on balance, be contrary to the public interest. If I am not satisfied of that, access must be given.

Section 31B of the Act provides that a document is exempt if it is conditionally exempt under Division 3, and access to the document would also, on balance, be contrary to the public interest for the purposes of section 11A(5) of the Act.

I have weighed the factors in favour of disclosure versus those against it.

I have identified the following factor for disclosure:

- it would promote the objects of the Act, as described in section 3.

I have identified the following factors against disclosure:

- disclosure of the documents would reveal commercial information that is not generally known and could be expected to unreasonably adversely impact commercial operations of a third party; and
- disclosure of conditionally exempt material would harm the professional business interests of third parties and impact their ability to undertake future business.

On balance, I consider that the public interest favours the protection of the material considering the factors listed above. I consider it would be contrary to the public interest to release the confidential information contained within these documents.

I have also had regard to section 11B(4) of the Act which sets out the factors which are irrelevant to my decision, which are:

- Access to the documents could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- Access to the documents could result in any person misinterpreting or misunderstanding the documents;
- The authors of the documents were (or are) of high seniority in the agency to which the request for access to the documents was made;
- Access to the documents could result in confusion or unnecessary debate.

I have not taken into account any of those factors in this decision.

Therefore, I find that the documents or parts of documents as listed on the Schedule are exempt from release under s 47G.

A copy of the document schedule is enclosed with this letter.

As you are aware third parties were consulted and provided submissions in relation business information contained in the documents. Where I have decided to grant access to documents where submissions were received about exempt material, these third parties have review rights under the Act. I am therefore unable to provide you with access to documents where this is the case until those review rights have been exhausted. Where applicable, the material not subject to third party review rights will be provided to you.

Your review rights are outlined on the following page. If you have any questions or wish to discuss this decision further, please contact me at foi@anu.edu.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kathryn Dan', written in a cursive style.

Kathryn Dan
University Archivist, Associate Director
Records & Archives

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Application for Internal Review of Decision

Section 54A of the Act gives you the right to apply for an internal review of my decision.

It must be made in writing within 30 days of receipt of this letter, no particular form is required but it is desirable to set out in the application the grounds on which you consider the decision should be reviewed.

The application should be addressed to Freedom of Information at foi@anu.edu.au.

Application for Information Commissioner Review of decision

Under section 54L of the Act, you may apply to the OAIC to review my decision. An application must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW.

More information is available on the OAIC website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.