

17 November 2012

Office of the Australian Information Commissioner  
Level 8, Piccadilly Tower  
133 Castlereagh Street  
Sydney NSW 2000

**BY EMAIL:** enquiries@oaic.gov.au

Dear Commissioner McMillan,

I hereby request a review of the decision (attached, File No: 12/12385) by the Attorney-General's Department to refuse access to documentation under the *Freedom of Information Act 1982*.

The decision maker has stated that whilst ss 11A(5) *Freedom of Information Act 1982* provides that material identified as conditionally exempt must be released unless on balance, such disclosure would be contrary to the public interest.

The factors provided in the decision to refuse access to the information sought is as follows:

- a)** the material is still in draft form;
- b)** the material has not gone through the necessary whole-of-government review and approval processes; and
- c)** to release such material at this stage would, in my view, prejudice the current negotiations and decision making processes which are in train.

It is submitted to the Information Commissioner that all three reasons given in the refusal are irrelevant, and cannot nor should not be used as justification to override the obvious public interest in disclosing such material.

**a)** That the material is still in draft form seems to either infer that the Commonwealth Government may be embarrassed by the document or the proposals contained within the documents sought for release under the legislation, or that the release may cause a loss of confidence in the Department or Commonwealth Government. This is an expressly irrelevant factor under the legislation.

**b)** That the material has not gone through processes for review and approval infers that the document may be misinterpreted or misunderstood to be a final or exposure draft, rather than a mere proposal. This is not sufficient to warrant suppression, and is an expressly irrelevant factor under the legislation.



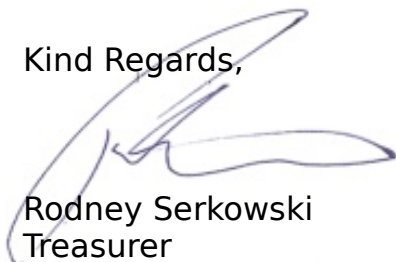
c) That the material is relevant to current negotiations and decision making processes is all the more reason to release the preparatory and draft legislative texts. It is also noted that causing confusion or unnecessary debate is an expressly irrelevant factor under the legislation.

If any of the requested material should fall outside of the above exceptions, then that material should be edited as per s 22 of the *Freedom of Information Act 1982* and released as soon as practicable.

It should also be noted that the release of such preparatory materials is essential to understanding and assessing whether the government department has appropriately responded to the consultative and decision making processes now employed after public scrutiny and outcry over the secretive processes previously employed by the Department, and whether the outcomes of such processes are simply not a reaffirmation of pre-determined outcomes.

Should you need to contact me, please feel free to email me at **rodney.serkowski@pirateparty.org.au** or please call **+61 409 159 904**.

Kind Regards,



Rodney Serkowski  
Treasurer  
Pirate Party Australia