



Dr David Stephens
Honest History
24 Collins Street
Thornbury VIC 3071
Australia

Via email: admin@honesthistory.net.au

Dear Dr Stephens

Decision on your Freedom of Information request

I refer to your request, received by the Department of Agriculture, Water and the Environment (**department**) on 10 February 2022 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

1. Minutes or record of meeting of the Australian Heritage Council (AHC) meeting of 21 December 2021, insofar as they relate to a heritage management plan (HMP) submitted by the Australian War Memorial (AWM).
2. Advice from the AHC or DAWE providing feedback to the AWM on the AWM's HMP following the AHC meeting 21 December 2021.
3. Any responses received by the AHC or DAWE from the AWM to the AHC's post-21 December feedback, including any AWM requests for further feedback from the AHC.

BACKGROUND

DAWE provided this advice to David Stephens by email dated 4 January 2022:

The AHC considered the Heritage Management Plan at its December 2021 meeting in accordance with the requirements of s. 324S(6) and s. 341S(7) of the *Environment Protection and Biodiversity Conservation Act 1999*. The AHC's feedback on the HMP has been provided to the Australian War Memorial.

The AWM provided this advice to David Stephens by email dated 7 January 2022:

We appreciate the feedback provided by the Australian Heritage Council on the Australian War Memorial's Heritage Management Plan and are considering it closely.

The AWM provided this further advice to David Stephens by email dated 12 January 2022:

The Australian War Memorial is updating its Heritage Management Plan and will seek further feedback from the Australian Heritage Council before it is published online, which is targeted for issue in the first quarter of 2022.

Full background: <http://honesthistory.net.au/wp/stephens-david-war-memorial-heritage-management-plan-a-loose-end-still-hanging/>

Documents from 21 December 2021 – 10 February 2022.'

My decision

The department holds 6 documents (totalling 29 pages) that relate to your request.

I have decided to:

- grant you **full access** to 3 documents (documents 1, 3 and 4);
- grant you **part access** to 3 documents (documents 2, 5 and 6) with some of the content removed.

I have decided that certain parts of documents that you have requested are exempt under the FOI Act as they contain information which would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Information has also been removed from the documents which is regarded as out of scope of your request under section 22(1)(a)(ii).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision.

Charges

On 23 February 2022, the department made a preliminary estimate of the charges applicable to your request in the amount of \$57.00. On 25 February 2022, the department received payment in full.

I have assessed the charge under Regulation 10 of the *Freedom of Information (Charges) Regulations 2019* and the cost of processing your request equalled the amount estimated. Accordingly, I have fixed the charge under this provision.

How we will send your documents to you

The documents are attached.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@awe.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@awe.gov.au.

Yours sincerely

A handwritten signature in black ink, consisting of a series of connected loops and curves, positioned above the typed name.

James Barker
Assistant Secretary
Heritage Branch

5 April 2022



LIST OF DOCUMENTS FOR RELEASE

LEX-25970

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-16	01/12/21	Minutes* from the Australian Heritage Council Meeting dated 1-2 December 2021 (* Note that these minutes are marked 'draft' as it is the most contemporaneous document held by the Department at the date of the FOI request (10 February 2022), and minutes are marked in draft until endorsement by the Australian Heritage Council at a subsequent meeting.)	Release in full	N/A	Pages 1-16: out of scope material deleted under s 22(1)(a)(ii). Pages 12-13: staff details deleted under s 22 (out of scope).
2.	17-19	08/12/21	Email correspondence between Department of Agriculture Water and Environment (DAWE) and Australian War Memorial	Release in part	s 47E(d)	Pages 18-19: information in relation to certain operations of agencies under section 47E(d). Pages 17-18: staff details deleted under s 22 (out of scope).
3.	20	13/12/21	Email correspondence between DAWE and Australian War Memorial	Release in full	N/A	Page 20: staff details deleted under s 22 (out of scope).
4.	21-22	10/12/21	COMMENTS BY THE HISTORIC HERITAGE PAIR (HHP) on Revised AWM Heritage Management Plan	Release in full	N/A	N/A.

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
5.	23-25	15/12/21	Email Correspondence between DAWE and Australian War Memorial	Release in part	s 47E(d)	Page 24: information in relation to certain operations of agencies under section 47E(d). Pages 23-24: staff details deleted under s 22 (out of scope).
6.	26-29	21/01/21	Email correspondence between DAWE and Australian War Memorial	Release in part	s 47E(d)	Pages 26, 28-29: information in relation to certain operations of agencies under section 47E(d). Pages 26-28: staff details deleted under s 22 (out of scope).

REASONS FOR DECISION

What you requested

‘1. Minutes or record of meeting of the Australian Heritage Council (AHC) meeting of 21 December 2021, insofar as they relate to a heritage management plan (HMP) submitted by the Australian War Memorial (AWM).

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On 10 February 2022 the department acknowledged your request and advised you that we would not include personal details about our staff. You did not contact the department again about this. Staff details have therefore been deleted in accordance with section 22(1) of the FOI Act.

What I took into account

In reaching my decision, I took into account:

- your original request dated 10 February 2022;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;

- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that certain parts of documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

Section 47E(d) of the FOI Act – certain operations of agencies

I have applied the conditional exemption in section 47E(d) to documents 2, 5, and 6. Section 47E(d) of the FOI Act relevantly provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Paragraph 6.123 of the Guidelines provides, in relation to section 47E(d) of the FOI Act, that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

The documents are a series of emails between the department and the Australian War Memorial. The document contains hyperlinks to a secure agency document management system. I am satisfied that the material in the documents relates to the secure and efficient exchange of information within the agency.

I consider that the disclosure of this information would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of this function. Specifically, the disclosure could impact the secure transmission of information in the routine conduct of work as it could allow persons outside of the Commonwealth to access secure documents. On this basis, I have decided that the information included in documents referred to in the Schedule is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'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.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance, being the renovations upon a significant cultural monument;
- promote effective oversight of public expenditure in relation to renovations to the Australian War Memorial.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice the ability of the department to perform secure exchange of information with other agencies, as the hyperlink could allow a person outside of the Commonwealth to access files which are stored on secure servers. In addition, removing this information from the document does not prevent you from seeing the remaining contents of the email exchange between agencies.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the documents would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

Conclusion

In summary, I am satisfied that parts of documents, as set out in the Schedule, are conditionally exempt under section 47E(d) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have decided not to release the documents in full to you.

As identified in the Schedule, I have deleted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.

Summary of my decision

In conclusion, I have decided to:

- grant you full access to 3 documents; and
- grant you part access to 3 documents.

I have decided that:

- Documents 2, 5 and 6 are conditionally exempt, in part, under section 47E(d) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).