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The Information Commissioner
OAIC
Sydney

I seek an information commissioner review **and conduct complaint** of the decision of the attorney general in this matter. The decision is attached to this email.

I shall be providing the grounds of my review once you allocate IC review a case officer but in the interim, my provisional grounds are:

1. I dispute the adequacy of the search to find all the material falling within the purview of my request.
2. None of the conditional exemptions invoked are legally tenable.
3. Documents withheld on ground of irrelevance (s22) is disputed.

s22

Kindly acknowledge receipt.

s 22

----- Forwarded message -----

From: Attorney Correspondence <attorney@ag.gov.au>
To: **s 22** <**s 22**>
Cc: Attorney Correspondence <attorney@ag.gov.au>
Sent: Monday, 24 January 2022, 05:32:16 pm AEDT
Subject: FOI Request FOI21/32 - Decision [SEC=OFFICIAL]

OFFICIAL

Dear **s 22**

FOI Request FOI21/32

In relation to your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents (our ref: FOI21/32), please see **attached**.

Yours sincerely,

Office of Senator the Hon Michaelia Cash

Attorney-General

Minister for Industrial Relations

Deputy Leader of the Government in the Senate

OFFICIAL

If you have received this transmission in error please notify us imme

**REX PATRICK**Centre Alliance
Senator for South Australia

Our ref: NC-FOI/MV

Director of FOI Dispute Resolution
Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001By email: foidr@oaic.gov.au

Dear Director,

This is an application for review of FOI Decision FOI20/3 (made by the Commonwealth Attorney-General) under Part VII of the *Freedom of Information Act 1982* (the FOI Act).

The decision made by the Attorney-General is not the correct or preferable decision. I will make submissions in relation to this matter once a case officer has been allocated to the matter.

Should you have any questions in relation to this request, please don't hesitate to contact my Constituent Officer, **s 22** (**s 22** [@aph.gov.au](mailto: [REDACTED]@aph.gov.au)), who has carriage of this request on my behalf.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rex Patrick', written over a horizontal line.

Rex Patrick

04/06/2020

Electorate OfficeLevel 2, 31 Ebenezer Place
Adelaide, South Australia 5000
Phone: (08) 8232 1144
Fax: (08) 8232 3744
Email: Senator.Patrick@aph.gov.au**Parliament House**Canberra, ACT 2600
Phone: (02) 6277 3713
Fax: (02) 6277 5834

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Good Afternoon,

Please find *attached* a letter from Senator Rex Patrick seeking IC review of an FOI matter.

Kind regards,

s 22

s 22

| **Constituent Officer**

Office of Rex Patrick | Senator for South Australia

(Electorate Office) Lvl 2/31 Ebenezer Place, Adelaide | TEL: 08 8232 1144



REX PATRICK
Centre Alliance
Senator for South Australia



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I'd like to seek ic review of the below deemed refusal

----- Forwarded message -----

From: **FOI** <FOI@pmc.gov.au>

Date: Mon, 22 Feb 2021 at 6:54 pm

Subject: FOI/PMO/2021/015: FOI Request - Office of the Prime Minister [SEC=OFFICIAL]

To: Paul Farrell ^{s22}

Cc: FOI <FOI@pmc.gov.au>

OFFICIAL

Dear Mr Farrell

We refer to your email below, in which you made a request to the Prime Minister's Office (PMO) for access under the *Freedom of Information Act 1982* (Cth).

The Department of the Prime Minister and Cabinet provides the PMO with administrative support in the processing of FOI requests made to the PMO. We have accordingly forwarded your email to the PMO for consideration.

We will advise you of future developments in this matter (PMO reference: **FOI/PMO/2021/015**).

Regards

FOI Adviser

FOI and Privacy | Legal Policy Branch

Government Division

Department of the Prime Minister and Cabinet

p. +61 2 6271 5849

e. foi@pmc.gov.au |

www.pmc.gov.au

PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

From: Paul Farrell s22
Sent: Thursday, 18 February 2021 12:12 PM
To: FOI <FOI@pmc.gov.au>
Subject: FOI Request - Office of the Prime Minister

Under the FOI Act I request:

All documents and correspondence that relate to or mention the distribution of funds under Round 3 of the Safer Communities program from the prime minister's office dated between 1 December 2018 and 30 March 2019.

Please include any discussions of grant recipients or allocations of funding to particular electorates.

Where documents or correspondence relate to these matters I request they be released in full.

Regards

Paul Farrell

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

I'd like to seek IC review of the below decision

----- Forwarded message -----

From: FOI <FOI@pmc.gov.au>

Date: Mon, Feb 22, 2021 at 6:52 PM

Subject: FOI/PMO/2021/014: FOI request - Office of the Prime Minister [SEC=OFFICIAL]

To: Paul Farrell §22

Cc: FOI <FOI@pmc.gov.au>

OFFICIAL

Dear Mr Farrell

We refer to your email below, in which you made a request to the Prime Minister's Office (PMO) for access under the *Freedom of Information Act 1982* (Cth).

The Department of the Prime Minister and Cabinet provides the PMO with administrative support in the processing of FOI requests made to the PMO. We have accordingly forwarded your email to the PMO for consideration.

We will advise you of future developments in this matter (PMO reference: **FOI/PMO/2021/014**).

Regards

FOI Adviser

FOI and Privacy | Legal Policy Branch

Government Division

Department of the Prime Minister and Cabinet

p. +61 2 6271 5849

e. foi@pmc.gov.au |

www.pmc.gov.au

PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

From: Paul Farrell s22
Sent: Thursday, 18 February 2021 12:09 PM
To: FOI <FOI@pmc.gov.au>
Subject: FOI request - Office of the Prime Minister

Under the FOI Act I request:

All documents and correspondence that relate to or mention Peter Dutton's administration of the Safer Communities fund, or the awarding of a one off grant to the National Retail Association since Friday 5 February to the present.

Where documents and correspondence relate to this, I request they be released in full.

Regards

Paul Farrell

Please note this request is directed to the prime minister's office personally, and not the Department.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

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The Information Commissioner
OAIC
Sydney

I seek an information commissioner review **and conduct complaint** of the decision of the attorney general in this matter. The decision is attached to this email.

I shall be providing the grounds of my review once you allocate IC review a case officer but in the interim, my provisional grounds are:

1. I dispute the adequacy of the search to find all the material falling within the purview of my request.
2. None of the conditional exemptions invoked are legally tenable.
3. Documents withheld on ground of irrelevance (s22) is disputed.

s22

Kindly acknowledge receipt.

s 22

----- Forwarded message -----

From: Attorney Correspondence <attorney@ag.gov.au>
To: **s 22** <s 22>
Cc: Attorney Correspondence <attorney@ag.gov.au>
Sent: Monday, 24 January 2022, 05:36:20 pm AEDT
Subject: FOI Request FOI21/33 - Decision [SEC=OFFICIAL]

OFFICIAL

Dear **s 22**

FOI Request FOI21/33

In relation to your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents (our ref: FOI21/33), please see **attached**.

Yours sincerely,

Office of Senator the Hon Michaelia Cash

Attorney-General

Minister for Industrial Relations

Deputy Leader of the Government in the Senate

OFFICIAL

If you have received this transmission in error please notify us immediately by return e-mail and delete it



Getting Started

Before you start

- You can save this form to your computer so you can come back to it later.
- Fields marked with an asterisk (*) must be completed before you can submit the form.
- You can save details of your original FOI request in a separate document (i.e. a Word document) and attach it to the Review Details section of this form.
- If you have trouble completing the form please send an email to enquiries@oaic.gov.au
- This form is sent to the Office of the Australian Information Commissioner via a secure system to ensure your personal information is protected.

What happens to your application?

- Staff of the Office of the Australian Information Commissioner will assess the information you have provided and decide the appropriate next steps. We will then contact you.
- We will use the information you have provided to assess your application and conduct the review. We will usually disclose the information you give us to the agency or minister who made the FOI decision and, if necessary, others who have information relevant to your review. In the case of a challenge to a decision by this Office, we may need to disclose some information to a review body, for example a court or tribunal.
- Your personal information will be used and stored in accordance with the Information Privacy Principles.

You can also submit a review request in writing, by [email](#), fax or in person by visiting one of our offices.

Details

Your Details (You must provide at least one contact method)

Title	First Name *	Last Name *
<input type="text" value="Mr"/>	<input type="text" value="Hedley"/>	<input type="text" value="Thomas"/>

Please note, we are not able to accept anonymous requests for review of an FOI decision.

Are you representing an organisation? *

Yes No

Organisation Name *

Preferred contact method *

Email Phone Post Other

Phone (daytime)

Mobile

You must provide an email or postal address so that we can send you notices.

Email

Postal Address

City

State

Postcode

Other contact details (eg. fax or international address)

Further instructions (for example, if you need an interpreter and in which language)

Are you submitting the application on behalf of someone else? *

- Yes No

Minister or Agency Information

Please select the Australian Government agency or minister who made the FOI decision you want reviewed. *

If you want more than one decision reviewed, you will need to make a separate application for each decision.

- Australian Government Agency
 Minister

Please select the Australian Government Agency that made the decision you want reviewed. *

- Australian Federal Police
 Australian Taxation Office
 Centrelink
 Department of Defence
 Department of Education, Employment and Workplace Relations
 Department of Family, Housing, Community Services and Indigenous Affairs
 Department of Foreign Affairs and Trade
 Department of Human Services
 Department of Immigration and Citizenship
 Department of Prime Minister and Cabinet
 Department of Veterans' Affairs
 Medicare
 Department of Health and Ageing
 Refugee Review Tribunal
 Migration Review Tribunal
 Child Support Agency
 Other

Previous contact with the agency

If the agency has given you a reference number relevant to your FOI request, please tell us this number/s. (We do not need to know your tax file number so please do not provide it).

FOI/PMO/2012/022

Information Commissioner review details

Have you received a decision? *

- Yes No

Date of the decision you want reviewed. *

4 January, 2013

There are time limits for lodging a review application. Please see our website for more detail.

Please identify the reason you are applying for a review. *

- the agency or Minister refused me access to documents or parts of documents I wanted to access.
- the agency or Minister has deferred my access to the documents I wanted to access.
- the agency or Minister has refused to make corrections to my personal information.
- the agency or Minister decided to release information about me or my business and I believe it should not be released.
- I believe I have been charged incorrectly.
- the agency or Minister granted me access to documents but I have not received them.
- the agency or Minister granted access to a qualified person and not directly to me.
- the agency or Minister refused to extend the time for me to seek an internal review

Please provide a summary of why you think the decision is wrong

For much of the second half of 2012, the Prime Minister and certain of her senior staff and advisers were involved in briefings concerning media commentary and media investigations and federal Opposition questioning of the Prime Minister and her conduct as a solicitor for the AWU and some of its officers. I am aware from my own contact with the Prime Minister's office that significant taxpayer-funded resources were dedicated, in 2012, to deal with these matters. Indeed, the Prime Minister also conducted two lengthy media conferences, in Canberra, that were specifically held to address many questions. In the last parliamentary session of 2012, following extensive questioning in federal parliament, the Prime Minister made a lengthy speech, following a speech by the Opposition leader. I have sought all of the material that was produced and received from June 1 2012 in relation to these matters. Many hundreds of hours of work by public servants was expended. It is important to note that I have not sought any material produced prior to that date; I have clearly not sought any material from the period during which Ms Gillard was a solicitor at Slater & Gordon, years prior to her appointment as a Minister. The FOI decision-maker in the Prime Minister's Office has, however, rejected my request. The grounds for rejection (see attached) are spurious. If the Prime Minister and her senior staff regarded the new material that I have sought as irrelevant to her role as Prime Minister, they would not have permitted it to be generated with the taxpayer-funded use of many public resources and public servants since June 2012. There is significant and important public interest in examination of this material. In my view, the decision of the Prime Minister's senior member of staff member to deny access to the material, which I know does indeed exist, is offensive. It would make a mockery of Freedom of Information if it were allowed to stand.

What action or result would you like from the Information Commissioner? *

I ask that the Information Commissioner reject the decision of the Prime Minister's FOI decision-maker, and order release of the material sought. Under circumstances where, in my view, the Prime Minister's decision-maker's rejection is a deliberate and spurious attempt to conceal material that is overwhelmingly in the public interest, I believe the Information Commissioner should consider making a robust criticism, in his reasons. I trust that the Information Commissioner can take steps to ensure that the material that I have sought is not destroyed, pending a decision by the Information Commissioner.

If you have contacted us before about this matter, please provide the reference number we gave you

Supporting documents

To start a review, the Office needs a copy of the decision you want reviewed. Without the decision, we will not be able to start your review. We also recommend that you attach a copy of your FOI request and internal review request, if applicable. If you are lodging the review for someone else, you should also attach any documents which indicate you are authorised to act for that person.





You can attach these documents electronically or by post. You may also attach other relevant documents that support your application.

Do you have any electronic documents that you want to send electronically with this online application for review? *

- Yes No

Please add any documents to be sent electronically with this form
 (Please ensure that the total size of each attachment does not exceed 2MB
 Please ensure that the total size of all attachments does not exceed 10MB)



Attachment Name	Size (in KB)		
FOI-PMO2012-022 Decision package.pdf	1,567.29		
Copy of PM FOI Dec 8.doc	25		

Do you have paper documents you are posting to the Office in support of your application? *

Yes No

If you have documents to post, after you have submitted this form electronically, please print it and attach it to your documents so we can relate them to your electronic application. Post your documents to:

Director Compliance (Merits Review)
GPO Box 5218
Sydney NSW 2001

Review Submission

Submitting your application for an Information Commissioner review of an FOI decision

Please review the information contained in your application for a review. If you would like to change anything you can return to any area of the form to make changes.

Once you submit the application you will receive a confirmation message with a receipt number saying that your Application for Review has been sent to the Office of the Australian Information Commissioner for processing. Please take note of the receipt number so you can use it when enquiring about the status of your application.

What happens next? The Office will assess your application and then contact you about the next steps in our process.

There are terms and conditions that you must agree to before you electronically submit this form. Click the link below to read them. They will open in a new window. If you agree, close the window to return to this form and check the box below.

I have read and agree to the [SmartForm Service Terms and Conditions](#) (link opens in a new window)

If you have not yet completed your form and want to work on it later click:

 **Save** The 'Save' button allows you to save a draft copy of this form to your local computer so you can access this Review request form without being connected to the internet.

When you are ready to submit your form click:


 **Save & Submit** The 'Save & Submit' button will allow you to submit your application to the Office of the Australian Information Commissioner for processing and save a local copy.

Dear Sir/Madam

Please see attached correspondence.

Kind regards

s 22 | Lawyer

Allens Arthur Robinson 

530 Collins St | Melbourne 3000 | Australia

t s 22

Website: <http://www.aar.com.au> | Office locations: <http://www.aar.com.au/offices> | Partner contacts: <http://www.aar.com.au/experts>

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Date 5 August 2011

ABN 47 702 595 758

From s 22 Allens Arthur RobinsonLevel 27
530 Collins Street
Melbourne VIC 3000
Australia
T +61 3 9614 1011
F +61 3 9614 4661**To** Office of the Australian Information Commissioner,
Canberra**Email** enquiries@oaic.gov.au*Correspondence*
GPO Box 1776
Melbourne VIC 3001
Australia
DX 30999 Melbourne

www.aar.com.au

Confidential Email

Dear Sir/Madam

Request for Review of Freedom of Information Request

Please see attached.

Attach

Our Ref MICM:PODM:306171502

bwprn A0118064627v1 306171502 5.8.2011

This email (including all attachments) may contain personal information and is intended solely for the named addressee. It is confidential and may be subject to legal or other professional privilege. Any confidentiality or privilege is not waived or lost because this email has been sent to you by mistake. If you have received it in error, please let us know by reply email, delete it from your system and destroy any copies. This email is also subject to copyright. No part of it should be reproduced, adapted or communicated without the written consent of the copyright owner. Any personal information in this email must be handled in accordance with the Privacy Act 1988 (Cth). We may collect personal information about you in the course of our dealings with you. Our privacy statement (www.aar.com.au/general/privacy.htm) tells you how we usually collect and use your personal information and how you can access it. Emails may be interfered with, may contain computer viruses or other defects and may not be successfully replicated on other systems. We give no warranties in relation to these matters. If you have any doubts about the authenticity of an email purportedly sent by us, please contact us immediately.

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Singapore
Sydney

A

5 August 2011

Office of the Australian
Information Commissioner
GPO Box 2999
Canberra ACT 2600

By Email

ABN 47 702 595 758
Level 27
530 Collins Street
Melbourne VIC 3000
Australia
T +61 3 9614 1011
F +61 3 9614 4661
Correspondence
GPO Box 1776Q
Melbourne VIC 3001
Australia
DX 30999 Melbourne
www.aar.com.au

Dear Sir/Madam

Request for Review of Freedom of Information Request

We refer to Philip Morris' request under the *Freedom of Information Act 1982 (Cth) (FOI Act)* made on 17 March 2011 to Mr Wayne Swan, the Treasurer (*FOI Request*). The FOI Request sought access to 19 categories of documents relating to the plain packaging of cigarettes. A copy of the FOI Request is attached marked Attachment A.

On 29 June 2011, the Treasurer made a decision in relation to the FOI Request (*Decision*). A copy of the Decision is attached marked Attachment B. The Decision identified 13 documents relevant to the FOI Request and claimed exemptions under the FOI Act over 8 of those documents.

On behalf of Philip Morris, we now apply for review of the Decision by the Information Commissioner in accordance with s 54N of the FOI Act on the following grounds:

1. Contact details of the applicant

Please direct all correspondence, documents and queries to **s 22** c/ Allens Arthur Robinson.

Name of Representative: Allens Arthur Robinson
Address: Level 27, 530 Collins Street
Melbourne VIC 3000
Contact Name: **s 22**
Email Address: **s 22**@aar.com.au
Contact Telephone: **s 22**

2. Documents exempt under s 34 of the FOI Act

The Decision exempts documents 2, 3, 4 and 6 from disclosure to Philip Morris under s 34(3) of the FOI Act on the basis that disclosure of those documents would reveal the substance of a Cabinet decision or deliberation. Section 34(3) of the FOI Act provides:

Our Ref MICM:PODM:306171502

bwpm A0118064627v1 306171502 5.8.2011

Bangkok
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Melbourne
Perth
Phnom Penh
Port Moresby
Shanghai
Singapore
Sydney

A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, *unless the existence of the deliberation or decision has been officially disclosed.*

The Decision does not provide any information or reasoning as to whether the documents made exempt under s 34(3) of the FOI Act contain information, the disclosure of which would reveal decisions or deliberations of Cabinet, which have not already been officially disclosed. It is submitted that the decision to introduce a requirement for the plain packaging of tobacco products has been 'officially disclosed' with the Bill being introduced into Parliament on 6 July 2011. Therefore, documents 2, 3, 4 and 6 for which an exemption under s 34(3) is asserted should be disclosed.

Further, the Decision exempts documents 9, 11 and 12 under s 34(1) of the FOI Act. However, the Decision does not address whether these documents contain purely factual material. Pursuant to s 34(6) of the FOI Act, documents are not exempt under s 34(1) of the FOI Act if they consist of purely factual material unless their disclosure would reveal a Cabinet decision or deliberation and that decision or deliberation has not been officially disclosed. For the reasons discussed above, it is submitted that as the decision to introduce a requirement for the plain packaging of tobacco products has been officially disclosed, documents to which an exemption under s 34(1) is asserted should be disclosed to the extent they contain purely factual material relating to plain packaging.

3. Documents exempt under s 47C of the FOI Act

Documents 2, 3, 4 and 6 identified in the schedule to the Decision were made exempt on the basis that these documents contained 'deliberative processes' of an agency or Minister and that disclosure of these documents was contrary to the public interest.

In applying the public interest test, the Decision has not given public interest factors in favour of disclosure adequate weight. The only public interest factor identified against disclosure was that disclosure of the documents would be likely to prejudice the confidentiality necessary for the proper functioning of the ordinary business of government. It is submitted that this is an insufficient reason against disclosure of the document and such reasoning is contrary to the objects of the FOI Act, being to provide public access to government held information and to improve the democratic process.

Further, the Decision does not address how the asserted hypothetical harm weighs against the factors favouring disclosure. The Decision itself recognises the 'significance of the public debate in this area' and as such, individuals should be given access to as much information as possible in order to facilitate informed debate on the topic. The decision to introduce the plain packaging of tobacco products is a matter of public importance and the public debate relating to its introduction is ongoing. Therefore, the public interest favours disclosure of these documents and outweighs any asserted hypothetical harm to the free and frank discussions of elected officials.

In any event, the *Tobacco Plain Packaging Bill 2011 (Cth) (Bill)* was introduced into Parliament on 6 July 2011 and as such, the public interest considerations asserted by the decision-maker can no longer be relevant. The introduction of the Bill into Parliament is a clear indication that the decision to introduce the requirement for the plain packaging of

tobacco products has been made by the government. Therefore, although public debate relating to the Bill is ongoing, it can no longer be asserted that the government's decision-making will be prejudiced by disclosure of the particular documents.

4. Documents exempt under s 45 of the FOI Act

Document 10 identified in the schedule to the Decision was exempted under s 45 of the FOI Act on the basis that its disclosure would found an action by a person for breach of confidence. The Decision stated that the document was 'communicated with the mutual understanding that it was to be kept in confidence.' However, the Decision does not identify with the necessary specificity whether the information in document 10 has the necessary quality of confidentiality, nor any evidence of a 'mutual understanding' that the information in document 10 was to be kept confidential. For these reasons, we question whether disclosure of document 10 would found an action for breach of confidence and as such, this document should be disclosed to Philip Morris.

5. Documents exempt under s 47G of the FOI Act

Document 10 is subject to an exemption under s 47G of the FOI Act on the basis that it would disclose business information, the disclosure of which would unreasonably and adversely affect a person's business affairs or undertaking and the public interest is against disclosure.

The Decision states that:

'disclosure of the information would adversely impact on the organisation's ability to perform its advocacy function...it could also be reasonably expected that the organisation would not provide information to the Australian Government in the future.'

We question whether the disclosure of the particular documents would have the consequences contended for by the decision-maker and thus attract s 47G of the FOI Act on the following basis:

- (a) First, although the Decision states that the document 10 was provided 'as part of the advocacy role of a particular organisation', the decision is unclear as to whether this information relates to the 'business, commercial or financial affairs' of the organisation. It is submitted that if document 10 does not contain information concerning the business, commercial or financial affairs of the organisation, it is incapable of being exempt under s 47G of the FOI Act. In addition, without further information as to the organisation who provided the document to the Treasurer, it is difficult to determine whether the document was provided by a government agency or undertaking, in which case, it could not be exempt under s 47G.¹
- (b) Secondly, the Decision does not adequately address how the business, commercial and financial affairs of the organisation would be, or could reasonably be expected to be, unreasonably and adversely affected by disclosure of document 10. The Decision merely states that disclosure of the information would impact on

¹ See Guidelines at 6.161.

the organisation's ability to perform its advocacy function. However, as stated in the Guidelines issued by the Commonwealth Information Commissioner (*Guidelines*), 'the presence of "unreasonably" in s 47G implies a need to balance public and private interests'. To this end, the Decision does not address how the alleged harm to the organisation's advocacy role is *unreasonably* affected by disclosure of the document. We submit that the interests of the public in being informed of all the views the government has taken into account in the formulation of its policy outweighs the hypothetical risk that the organisation's advocacy role may be adversely affected.

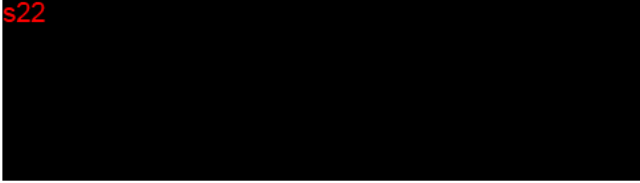
- (c) Thirdly, it is submitted that there is not a sufficient basis for a finding that disclosure of document 10 could 'reasonably be expected to prejudice the future supply of information to the Commonwealth'. The Guidelines relating to this exemption state that a reasonable expectation is an 'expectation that is based on reason. Mere assertion or speculative possibility is not enough.' The Decision does no more than speculate as to the consequences of disclosure. Further, the Guidelines state 'there must be a reasonable likelihood that disclosure would result in a reduction in both the quantity and quality of business information flowing to the government.' Again, the Decision gives no reasons as to a 'reasonable likelihood' that the quantity and quality of information provided by this organisation to the Commonwealth will be reduced as a result of disclosure of document 10. In the absence of any other reasons, it is submitted that the disclosure of document 10 could not *reasonably be expected* to prejudice the future supply of information to the Commonwealth.
- (d) Finally, even if disclosure of the document would have the consequences contended for by the decision-maker (which is not admitted), it is submitted that the public interest favours disclosure of the document. Pursuant to s 11A(5), if a document is conditionally exempt, access to the document must be given unless its disclosure, on balance, would be contrary to the public interest. In addition to the public interest factors in favour of disclosure discussed above at paragraph 3, it is submitted that it would be unreasonable if an organisation, whose public functions include advocacy, is able to contribute to government policy without such views being considered and critiqued by other members interested in the public debate on this matter.

For the reasons detailed above, it is submitted that the decision-maker has incorrectly applied the s 47G exemption to exempt document 10 and that Philip Morris should be given access to the document.

We look forward to receiving notice that the Information Commissioner will review the Decision and provide a decision in accordance with s 55K of the FOI Act. Should you have any queries please contact **s 22** on **s 22**

Yours faithfully

s22



FILE COPY

Allens Arthur Robinson

17 March 2011

The Hon Wayne Swan MP
 Treasurer
 PO Box 6022
 House of Representatives
 Parliament House
 Canberra ACT 2600

By Post

ABN 47 702 595 758
 Level 27
 530 Collins Street
 Melbourne VIC 3000
 Australia
 T +61 3 9614 1011
 F +61 3 9614 4661
 Correspondence
 GPO Box 1776Q
 Melbourne VIC 3001
 Australia
 DX 30999 Melbourne
 www.aar.com.au

Dear Mr Swan

Request for access to documents under the Freedom of Information Act 1982 (Cth)

We act for Philip Morris Limited (*Phillip Morris*).

We refer to our freedom of information request letter of 24 June 2010. Pursuant to section 15 of the *Freedom of Information Act 1982 (Cth) (Act)* Philip Morris requests access to documents created between 25 June 2010 and the date of this letter falling within the categories listed in the attached Schedule 1.

1. Details of Applicant's Adviser

Please send notices and documents to s 22 [REDACTED] c/o Allens Arthur Robinson.

Name of Adviser : Allens Arthur Robinson
 Address: Level 27, 530 Collins Street, Melbourne, Victoria, 3000
 Contact Name: s 22 [REDACTED]
 Email Address: s 22 [REDACTED]@aar.com.au
 Contact Telephone: s 22 [REDACTED]

2. Description of Requested Documents

In the attached schedule, the reference to *Document* includes any report, memorandum, spreadsheet, analysis, correspondence, file note or other record, whether in hard copy or electronic form, falling within the description or subject matter specified.

The reference to *Plain Packaging* or *PP* is a reference to a prohibition on the use, on tobacco packaging, of tobacco industry logos, trademarks, colours, brands, imagery or text, other than brand and product names in standard colour, position, font and size or, a prohibition to this effect.

The reference to *smoking rates* is to:

- the number of people in Australia smoking; and/or

Our Ref MICM:PODM 306171502:306171502

aicm A0116911849v2 306171502 17.3.2011

Bangkok
 Beijing
 Beijing IP
 Brisbane
 Hanoi
 Ho Chi Minh City
 Hong Kong
 Jakarta
 Melbourne
 Perth
 Phnom Penh
 Port Moresby
 Shanghai
 Singapore
 Sydney

- the total number of cigarettes consumed in Australia.

Should you have any questions, please telephone s 22 or
s 22 s 22

s22

Schedule 1: Requested Documents

1. Any document that identifies, or relates to or considers, the effect PP will have on smoking rates in Australia or elsewhere, including but not limited to, the impact on youth smoking rates.
2. Any document that addresses, or relates to or considers, whether PP would facilitate or be counter-productive to, an objective of reducing smoking rates in Australia, or elsewhere.
3. Any document that identifies, or relates to or considers, the possible effect of PP on tobacco product prices and competition in the tobacco market in Australia or elsewhere.
4. Any document that identifies, or relates to or considers, the possible effect of PP on persons or entities directly or indirectly involved in the retail of tobacco products, including any regulatory impact statement or study.
5. Any document that records, or relates to or considers, Government consultation with retailers of tobacco products, regarding the possible introduction of PP.
6. Any document that identifies, or relates to or considers, the effect of PP on illicit trade in tobacco and tobacco products in Australia (being counterfeit and contraband product, including 'chop chop').
7. Any document that addresses, or relates to or considers, the possible effect of PP on the salience of graphic health warnings used on cigarette packaging in Australia or elsewhere.
8. Any document that contains an assessment or evaluates any of the documents or the content of any of the documents identified in paragraphs 1 to 7 above.
9. Any document that addresses, relates to or considers, the nature and extent of the impact of PP on the intellectual property rights of tobacco manufacturers.
10. Any document that addresses, relates to, or considers, the value of the intellectual property of tobacco manufacturers that might be affected by PP.
11. Any document that addresses, relates to or considers, whether PP complies with, or is in violation of, any of Australia's obligations under the trade and investment treaties and agreements to which Australia is a party including:
 - (a) the General Agreement on Tariffs and Trade;
 - (b) the Paris Convention for the Protection of Industrial Property;
 - (c) the Agreement on Trade-Related Aspects of Intellectual Property;
 - (d) the Agreement on Technical Barriers to Trade;
 - (e) the Australia–US Free Trade Agreement;
 - (f) the Singapore–Australia Fair Trade Agreement;
 - (g) the Thailand–Australia Fair Trade Agreement;
 - (h) the ASEAN–Australia–New Zealand Free Trade Agreement;
 - (i) any Bilateral Investment Treaty to which Australia is a party.

12. Any document that addresses, relates to or considers PP, passing between the Treasurer and any of:
 - (a) Health Canada;
 - (b) the New Zealand Ministry of Health;
 - (c) the United Kingdom Department of Health;
 - (d) Action on Smoking and Health, Australia;
 - (e) Professor Simon Chapman, School of Public Health, University of Sydney;
 - (f) Victorian Centre for Tobacco Control;
 - (g) Cancer Council Victoria;
 - (h) Physicians for a Smoke-free Canada;
 - (i) Cynthia Callard;
 - (j) Non-Smokers' Rights Association (Canada).
13. The 'research and writing' commissioned by the Department of Health and Ageing, on behalf of the National Preventative Health Taskforce, referred to on page 2 of 'Taking Preventative Action: A response to: Australia The Healthiest Country by 2020, The Report of the National Preventative Health Taskforce' and relating, in whole or in part, to:
 - (a) tobacco control in Australia;
 - (b) predicted impact of proposed tobacco control strategies.
14. Any document that addresses, records or relates to the decisions, or reasons for decisions, of Governments, other than in Australia, to introduce, or not to introduce, PP.
15. All documents, including but not limited to, Cabinet documents and documents produced for or relating to Ministerial briefings or background briefings, that relate to or consider the Government's decision to introduce PP.
16. All documents, including but not limited to, Cabinet documents and documents produced for or relating to Ministerial briefings or background briefings, that relate to or consider the Government's announcement on 29 April 2010 of its decision to introduce PP. Attached is a copy of this announcement.
17. All documents, including briefings, memoranda, file notes and correspondence, that record, or relate to or consider, legal advice concerning PP in Australia.
18. Any document circulated within the Treasurer's office, or passing between the Treasurer and any or all of the Australian:
 - (a) Federal Department of Health and Ageing (including members of the National Preventative Health Taskforce);
 - (b) Federal Department of Prime Minister and Cabinet;
 - (c) Federal Department of Foreign Affairs and Trade;
 - (d) Federal Department of Treasury;
 - (e) Federal Department of Finance and Deregulation;

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- (f) Federal Attorney-General's Department;
 - (g) Federal Department of Innovation, Industry, Science and Research;
 - (h) Ministers, other than the Treasurer, responsible for each of the Federal Government departments listed above in this paragraph 18,

that relates to or considers PP.

- 19. The letter to the Senate Community Affairs Reference Committee, from the Department of Human Services and Health and referred to at page 69 (footnote 58) of the Senate Community Affairs Reference Committee Report 'The Tobacco Industry and the Costs of Tobacco Related Illness – 1995'.

Prime Minister of Australia

Published on *Prime Minister of Australia* (<http://www.pm.gov.au>)

Media Release

29 April 2010

Anti-smoking action

The Rudd Government today announced a comprehensive package targeting smoking and its harmful effects, including an increase in the tobacco excise of 25 per cent.

This increase in tobacco excise will provide an extra \$5 billion over four years, which along with existing revenues from tobacco, will be directly invested in better health and hospitals through the National Health and Hospitals Network Fund.

The Government's anti-smoking action includes:

- The first increase in tobacco excise (above inflation) in more than a decade, an increase of 25 per cent.
- Cracking down on one of the last frontiers for tobacco advertising - in a world first, cigarettes will have to be sold in plain packaging.
- Restricting Australian internet advertising of tobacco products.
- Injecting an extra \$27.8 million into hard-hitting anti-smoking campaigns.

All four measures deliver on major recommendations of the National Preventative Health Taskforce.

Cutting smoking will save lives, take pressure off our hospitals, and deliver significant economic benefits.

It is one of the best investments in prevention, and keeping people healthy and out of hospital, that we can make.

Smoking kills over 15,000 Australians every year, and is the largest preventable cause of disease and premature death in Australia. The social costs of smoking (including health costs) are estimated at \$31.5 billion each year. Annually, over 750,000 hospital bed days are attributable to tobacco related diseases.

Through tough action over the past two decades, including tax increases and bans on advertising, the number of daily smokers in Australia has been reduced from 30.5 per cent of the population aged 14 and over in 1988 to 16.6 per cent in 2007.

This is important progress, but we can and must do better.

EXCISE INCREASE

The Government will increase the excise and excise-equivalent customs duty rate applying to tobacco products by 25 per cent from midnight tonight. The excise on cigarettes will increase from \$0.2622 to \$0.32775 per stick and loose leaf tobacco from \$327.77 to \$409.71 per kilogram of tobacco.

This will increase the price of a pack of 30 cigarettes by around \$2.16.

This measure alone is expected to cut total tobacco consumption by around six per cent and the number of smokers by two to three per cent - around 87,000 Australians.

This measure will provide an extra \$5 billion over four years that, together with existing revenues collected from tobacco, will be directly invested in better health and hospitals through the National Health and Hospitals Network Fund.

Media Release Health

In this way, all customs and excise duty on tobacco will fund a reformed Australian health and hospital system into the future.

Cigarette price increases have been shown to be effective in cutting smoking, especially among young people, who are particularly sensitive to price.

Taxes on tobacco as a percentage of the retail price of tobacco are currently just 62% in Australia, compared to 80% in France and 77.5% in the United Kingdom.

Today's increase will bring Australia's tax treatment of tobacco closer to comparable countries.

CRACKING DOWN ON CIGARETTE ADVERTISING

In a world first, all cigarettes will be sold in plain packaging by 1 July 2012.

This will remove one of the last remaining frontiers for cigarette advertising, and was a key recommendation of the National Preventative Health Taskforce.

legislation will restrict or prohibit:

- tobacco industry logos
- brand imagery
- colours
- promotional text other than brand and product names in a standard colour, position, font style and size.

The Government will develop and test package design that will make cigarettes less appealing, particularly to young people.

Graphic health warnings will be updated and expanded. Research shows that industry branding and packaging design reduce the effectiveness of graphic health warnings on tobacco products.

The National Preventative Health Taskforce concluded that "there can be no justification for allowing any form of promotion for this uniquely dangerous and addictive product which it is illegal to sell to children", including packaging.

The Government will also legislate to restrict Australian internet advertising of tobacco products, bringing the internet into line with restrictions already in place in other media.

ANTI-SMOKING ADVERTISING

At the same time, the Government will boost investments in hard hitting advertising campaigns by \$27.8 million over four years, to a total of more than \$85 million in the next four years, to encourage even more Australians to quit smoking.

This additional investment will be used for campaigns targeting people in high-need and highly disadvantaged groups such as low socio-economic communities and pregnant women and their partners.

This will extend and broaden the focus of the previous National Youth Tobacco Campaign.

The first elements of the new campaigns will be rolled out by the end of this year.

Through the Australian Taxation Office and Customs and Border Security the Government will continue its successful strong enforcement against the production and importation of illicit tobacco.

This comprehensive anti-smoking package follows this week's landmark COAG agreement delivering fundamental reform to Australia's health and hospital system, and builds upon other actions the Government has taken to improve preventative health:

- A record \$872 million investment in preventative health including programs in schools, workplaces and community settings
- \$103.5 million under the National Binge Drinking Strategy
- The decision to establish the Australian National Preventative Health Agency which is currently being blocked by the Opposition in the Senate.

Source URL: <http://www.pm.gov.au/node/6720>

**OFFICE OF THE DEPUTY PRIME MINISTER AND TREASURER**

PO BOX 6022

PARLIAMENT HOUSE
CANBERRA ACT 2600Telephone: 02 6277 7340
Facsimile: 02 6273 3420www.treasurer.gov.au

s 22

Allens Arthur Robinson
GPO Box 1776Q
MELBOURNE VIC 3001

Dear s 22

I refer to your letter of 17 March 2011 in which you sought access to the following documents under the *Freedom of Information Act 1982* ("the FOI Act") on behalf of Philip Morris Limited:

Documents created between 25 June 2010 and 17 March 2011 which fall within the categories listed in Schedule 1.

This letter sets out my decision and the reasons for my decision in relation to your FOI request.

Materials relevant to making of decision

The materials, information and advice to which I have had reference in making this decision are:

- the terms of your FOI request;
- the relevant provisions of the FOI Act;
- guidelines issued by the Australian Information Commissioner (Information Commissioner);
- the contents of the documents relevant to your request; and
- advice from other Commonwealth agencies.

Decision

I have identified 13 documents relevant to your request. Of these, five documents will be released in part and eight will not be released (five are exempt in full and three are exempt in part and partially irrelevant to your request). A Schedule of Documents listing each document and details of my decision in relation to each document is included at Attachment A. The reasons for my decision are set out below.

Reasons for decision

Where the Schedule of Documents indicates an exemption claim has been applied to a document or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of that document are set out below.

Section 34 – Cabinet material

Section 34(1)(c) of the FOI Act provides that a document is exempt from release if it was brought into existence for the dominant purpose of briefing a Minister on a document that was both submitted to the Cabinet for its consideration (or was proposed by a Minister to be so submitted) and brought into existence for the dominant purpose of submission for consideration by the Cabinet. I have decided that documents 9, 11 and 12 are exempt under section 34(1)(c).

Subsection 34(3) of the FOI Act provides that a document is exempt to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed. Documents 2, 3, 4 and 6 disclose or canvas policy or legislative options that were subsequently considered by Cabinet. In my view, the release of these documents would allow a correct inference to be drawn about subsequent Cabinet deliberations. I have therefore decided that documents 2, 3, 4 and 6 are exempt under section 34(3).

Section 47C – deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Government of the Commonwealth. I am satisfied that documents 2, 3, 4 and 6 contain deliberative material, and have therefore decided that these documents are conditionally exempt under section 47C.

Public interest

Section 11A(5) of the FOI Act provides that access must be given to a conditionally exempt document unless access at that time would, on balance, be contrary to the public interest. I have taken into account the following public interest factors in favour of and against disclosure. Factors in favour of disclosure include:

- promoting the objects of the FOI Act to give the community access to documents;
- promoting Australia's representative democracy by increasing public participation in government processes and to promote better informed decision making; and
- increasing scrutiny, discussion, comment and review of government activities.

However, there are also significant factors against disclosure. Disclosure of these documents would be likely to prejudice the confidentiality necessary for the proper functioning of the ordinary business of government as disclosure could impact adversely on the ability of Ministers to discuss options for the resolution of high level, complex and sensitive policy issues where the Government is yet to make a final decision.

I am satisfied that the factors against disclosure of documents 2, 3, 4 and 6 outweigh the factors in favour of disclosure. Accordingly, I have decided that disclosure of these documents would, on

balance, be contrary to the public interest, and have therefore decided to refuse access under section 11A(5).

Section 45 – documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is exempt if its disclosure under the Act would found an action by a person (other than an agency or the Commonwealth) for breach of confidence. Document 10 is a letter containing information that is not widely known and was communicated with the mutual understanding that it was to be kept in confidence. Disclosure of the information would be a misuse, as it would be inconsistent with the understanding that the Deputy Prime Minister and Treasurer would keep this information confidential. On this basis, I find that disclosure of document 10 would found an action for breach of confidence, and have therefore decided that document 10 is exempt under section 45.

Section 47G – business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would disclose information concerning a person in respect of their business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking; and the disclosure of the information 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, or could reasonably be expected to prejudice the future supply of information to the Commonwealth.

Document 10 was provided to the Deputy Prime Minister and Treasurer as part of the advocacy role of a particular organisation. Disclosure of the information would adversely impact on the organisation's ability to perform its advocacy function. If this information was disclosed, it could also reasonably be expected that the organisation would not provide information to the Australian Government in the future. On this basis, I have decided that document 10 is conditionally exempt under section 47G.

Given the significance of the public debate in this area, it is important that the views of all stakeholders continue to be available to the Australian Government. I am satisfied that the factors against disclosure of document 10 outweigh the factors in favour of disclosure. Accordingly, I have decided that disclosure of document 10 would, on balance, be contrary to the public interest, and have therefore decided to refuse access under section 11A(5).

Section 22 – material irrelevant to the request

Section 22 allows a Minister to delete irrelevant material from a document if the document is only partially relevant to an applicant's FOI request. Parts of documents 1, 4, 5, 7, 8, 11, 12 and 13 contain material irrelevant to your request. I have deleted that material accordingly.

Charges

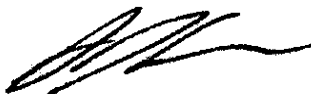
The charge for processing your request was \$337.31. On 27 May 2011, we received payment in full. A receipt for your cheque of \$337.31 is attached.

Rights of review

In accordance with section 26(1)(c) of the FOI Act, a statement setting out your rights of review under the Act is included at Attachment B.

If you have any questions in relation to your request, please contact Rebecca Fanning in our office on 02 6277 7340.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Thomas', with a long horizontal flourish extending to the right.

Andrew Thomas
Principal Adviser

FOI decision-maker for and on behalf of the Treasurer

**Section 17 List of IC review decisions created responding to item 1 of
FOIREQ24/00234**

1. **MR22/00144** 'ACY' and Attorney-General (Freedom of information) [2023] AICmr 7 (22 February 2023),
2. **MR20/00544** Rex Patrick and Attorney-General (Freedom of information) [2023] AICmr 9 (28 February 2023).
3. **MR21/00279** Paul Farrell and Prime Minister of Australia (Freedom of information) [2023] AICmr 32 (11 May 2023),
4. **MR21/00343** Paul Farrell and Prime Minister of Australia (No. 2) (Freedom of information) [2023] AICmr 33 (11 May 2023),
5. **MR19/00013** 'ADK' and the Treasurer (Freedom of Information) [2023] AICmr 35 (17 May 2023)
6. **MR22/00143** 'ADL' and Attorney-General (Freedom of Information) [2023] AICmr 36 (17 May 2023).
7. **MR13/00018** Thomas and Prime Minister [2014] AICmr 18 (20 February 2014)
8. **MR11/00220** Philip Morris Ltd and Treasurer [2013] AICmr88 (13 December 2013)