

From: Secretary@CGC
Sent: Wednesday, 15 November 2017 3:01 PM
To: Matt Rose (Matt.Rose@acf.org.au)
Subject: FW: Freedom of Information Request [SEC=UNCLASSIFIED]

Dear Mr Rose

The attached documents are forwarded in response to your FOI request of 2 October. There has been a slight delay because some of the documents you requested contained information that was provided by States to the Commonwealth Grants Commission in confidence and consultation with those States was required. All except one document are released in their entirety.

The outstanding document subject to your request is the agenda paper AP 2016-40 *What States do – Mining*.

That document (also attached) is released to you with redactions to information in Tables 3, 4 and 6 of that document. The redactions have been made to the document on the basis that the document is conditionally exempt under section 47B of the Act, as disclosure would cause damage to Commonwealth-State relations and disclose information communicated in confidence.

Material Considered

The material to which the I have had regard in making this decision includes:

- the terms of your request;
- the relevant provisions of the *Freedom of Information Act 1982* (the Act);
- guidelines issued by the Australian Information Commissioner (the Guidelines);
- the document within the scope of your request; and
- consultations with relevant third parties (that is, the State/Territory agencies which communicated the redacted information to the Commission in confidence).

Reasons for Decision

Documents affecting Commonwealth-State relations (s 47B)

Section 47B of the Act says that a document is conditionally exempt if disclosure of the document:

- a) would, or could reasonably be expect, to cause damage to relations between the Commonwealth and a State (s 47B(a)); or
- b) would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth (s 47B(b)).

The document *What States do – Mining* contains information in Tables 3, 4 and 6 that was communicated in confidence by various States/ Territories to the Commission. On this basis, the document is conditionally exempt for the purposes of section 47B of the Act.

Public interest

Section 11A(5) of the Act provides that conditionally exempt material must be released unless its disclosure would be contrary to the public interest. The Act and the Guidelines set out factors which can and cannot be taken into account in making this decision. I have complied with both the Act and the Guidelines in this regard.

I have considered the following factors in favour of disclosure, including whether disclosure would:

- promote the objects of the Act
- inform debate on a matter of public importance.

I also considered factors against disclosure, including whether disclosure would:

- cause damage to Commonwealth-State relations
- disclose confidential material.

The relevant State/Territory agencies provided information contained in Tables 3, 4 and 6 to the Commission with an explicit requirement of confidentiality. I am satisfied that disclosure of the information contained in the three tables in confidence would adversely affect the continued level of trust and co-operation between the Commission and the State and Territory treasuries, and could reasonably be expected to prejudice the flow of information to Commission in the future. Preserving the close working relationship between the Commission and each of the State and Territory treasuries is an essential pre-condition for the effective performance of the Commission's functions.

On this basis, I am satisfied that the document is conditionally exempt for the purposes of section 47B(a) and (b) of the Act, and that disclosure of the material supplied to the Commission in confidence would be contrary to the public interest. However, I am satisfied that it would be in the public interest to disclose the rest of the document subject to the redaction of the information supplied in confidence.

There was no correspondence between the Treasurer and the Commonwealth Grants Commission other than the formal Terms of Reference which are available on our website and in our Annual reports.

Michael Willcock
Secretary
Commonwealth Grants Commission