



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr Daming He

**DECISION BY: Mr Alex Anderson
Assistant Secretary
Legal Policy Branch**

The request

In a letter dated 8 May 2009 to the Department of the Prime Minister and Cabinet (the Department), Mr Daming He made a request under the *Freedom of Information Act 1982* (the FOI Act) to the then Prime Minister, the Hon Kevin Rudd MP, as follows:

To identify the problems, under the *Freedom of Information Act 1982*, I request disclosing information below:

- a. whether this matter have been brought to your attention?
- b. whether you have decided 'further correspondence on this issue may not receive a response'?
- c. whether you have decided not to do anything in respect of Australians' constitutional right to obey the laws and *Constitution* at work even though you have been advised that the Full Court's interpretation of the unlawful dismissal laws 'is incorrect' and affected all workers?
- d. what are your grounds for not upholding Australians' constitutional right at work?
- e. What are your grounds for keeping the situation that Australians' at work have to follow apparently unlawful directions?
- e. who decided not to inform you about the matter and what policies are applied, if you have not been informed?
- f. who decided not to take any actions, and what are the decision maker's grounds, if you have not done so?"

By letter dated 20 July 2009, the Department advised Mr He that the Department had accepted transfer of his FOI request from the Prime Minister on the grounds that the subject-matter of the request was more closely connected with the functions of the Department.

Following transfer of Mr He's request, the Department sought clarification of the terms of Mr He's request. By email dated 3 December 2009, Mr He revised the terms of his FOI request as follows:

1. 'The Guidelines in place for dealing with correspondence' on behalf of the Prime Minister. (Thank you for summarizing the Guidelines, but I want the original documents. It can be electronic copy. It will waste paper and postage to send the hardcopy. Actually, if it is possible, I want all the documents' electronic copies.)
2. A complete list of the documents relating to the correspondences of

- (1) my letters of:
 - (i) 9 September 2008, and
 - (ii) 1 January 2009, and
 - (iii) 8 May 2009,
 - (2) Ms Rebecca Irwin's letter of 16 December 2008,
 - (3) Ms Sarah Adams's letter of 23 Feb 2009
3. All documents on the above list
 4. The decisions should be included in the documents in 3 above, but for clarification they are listed below:
 - (1) the decisions and reasons in relation to my letter of 9 September 2008 and 1 January 2009—the 'subject matter[s] that warrants a response, but not from the Prime Minister, the Cabinet Secretary or the Parliamentary Secretary to the Prime Minister'
 - (2) the decision and reasons in relation to not to respond to my letter of 8 May 2009 except the FOI inquiry in the letter
 5. The document relied on by Ms Irwin to state: 'the Hon Philip Ruddock MP, informed you on 26 September 2006 of his decision not to intervene in your case, as no constitutional issues had been identified' (par 5 of Ms Irwin's letter of 16 December 2008 and par 13 of my letter of 1 January 2009).

As the FOI request was made prior to changes to the FOI Act that came into effect on 1 November 2010, the request falls for consideration under the terms of the FOI Act as it existed prior to the date those changes came into effect.

Application fee and processing and access charges

Mr He's FOI request was received without the \$30 application fee but with a request that the fee be remitted. By letter dated 14 April 2010, the Department advised Mr He that his request for waiver of the fee was refused. By letter dated 30 April 2010, Mr He requested internal review of the decision to refuse waiver and enclosed payment of the \$30 application fee in order to enable his FOI request to proceed pending a decision on his internal review request. By letter dated 8 November 2010, the Department advised Mr He that the application fee was waived.

By letter dated 29 July 2010, the Department advised Mr He of the estimated processing and access charges for his request. In an email of 28 August 2010, Mr He requested that the charges be reduced or not imposed. By letter dated 10 December 2010, the Department advised Mr He that it had decided to reduce the processing and access charges payable on his request. In an email of 17 December 2010, Mr He sought internal review of the Department's decision to reduce the charge. By letter dated 17 February 2011, the Department advised Mr He that processing and access charges for his request had been waived.

Searches for relevant documents

The following searches were undertaken to identify documents potentially relevant to Mr He's FOI request:

- The Department's electronic ministerial correspondence management system known as 'Slipstream' was searched.

- The Department's official files that were considered likely to contain documents relevant to the FOI request were searched.
- Relevant officers who were known to have dealt with matters pertaining to Mr He were asked to identify any relevant documents.
- Where officers who were known to have dealt with matters pertaining to Mr He were no longer with the Department, a search of their email accounts was undertaken.

The documents identified as relevant to Mr He's FOI request are listed in the schedule at Attachment A. The documents listed in the schedule correspond to the following parts of the FOI request:

- Part 1: Document 39.
- Parts 2, 3 and 4: Documents 1 to 131 are relevant to items 2, 3 and 4 of the FOI request.
- Part 5: Documents 57 to 59 and 132 and 133. The part of Ms Irwin's letter to Mr He of 16 December 2009 stating 'the Hon Philip Ruddock MP, informed you on 26 September 2006 of his decision not to intervene in your case, as no constitutional issues had been identified' was based on a clerical error made in the course of drafting a response for Ms Irwin to sign and adopted by me in the final draft that was submitted to Ms Irwin (the drafts are documents 57 to 59). The error was based on a conflation of advice contained in Documents 132 and 133.

Authorised decision-maker

I am the authorised decision-maker for this request in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Decision on access

My decision on the documents is set out in the schedule at Attachment A.

Section 36

Section 36 of the FOI Act is extracted at Attachment B.

Documents 28, 32 and 33

These documents comprise email correspondence between the Department of the Prime Minister and Cabinet and the Office of the Prime Minister regarding the Department's advice and recommended response to Mr He's FOI request. I am satisfied that they are internal working documents within the meaning of paragraph 36(1)(a) of the FOI Act.

I am satisfied that the parts of these documents that I have decided to exempt contain no material to which section 36 does not apply under subsections 36(5) and 36(6) of the FOI Act.

In order for a document of the kind described in paragraph 36(1)(a) of the FOI Act to be exempt under section 36, disclosure must be contrary to the public interest within the meaning of paragraph 36(1)(b) of the Act.

I consider a public interest factor favouring release of the documents to be as follows:

- The general public interest in government-held information being accessible.

I consider a public interest factor against release of the documents to be as follows:

- The public interest in protecting the confidentiality of communications between ministerial offices and departments in order to enable the provision of frank and candid advice.

On balance, I consider that disclosure would be contrary to the public interest under paragraph 36(1)(b) and therefore find that these documents are exempt under section 36 of the FOI Act.

Documents 93 and 98

Document 93 was prepared by the former Office of the Minister for Employment and Workplace Relations containing the Office's thinking on correspondence received from Mr He. Document 93 was sent to the Department of Education, Employment and Workplace Relations (DEEWR) for advice and, in response, DEEWR prepared Document 98 for the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP. I am satisfied that these documents are within the meaning of paragraph 36(1)(a) of the FOI Act.

I am satisfied that these documents contain no material to which section 36 does not apply under subsections 36(5) and 36(6) of the FOI Act.

In order for a document of the kind described in paragraph 36(1)(a) of the FOI Act to be exempt under section 36, disclosure must be contrary to the public interest within the meaning of paragraph 36(1)(b) of the Act.

I consider a public interest factor favouring release of the document to be as follows:

- The general public interest in government-held information being accessible.

I consider public interest factors against release to be as follows:

- The public interest in protecting the confidentiality of communications between ministers and departments in order to enable the provision of frank and candid advice.
- The public interest in the protection of communications which are the subject of legal professional privilege. As explained elsewhere in my decision, I have decided to exempt Document 98 under section 42 of the FOI Act on the grounds that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

On balance, I consider that disclosure would be contrary to the public interest under paragraph 36(1)(b) and therefore find that these documents are exempt under section 36 of the FOI Act.

Section 42 of the FOI Act

Section 42 of the FOI Act is extracted at Attachment B.

Document 98

DEEWR has advised that this document was prepared for the purpose of giving legal advice to the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP.

FOI guidelines applicable to the FOI Act prior to the changes made on 1 November 2010 provide that section 42 may operate to exempt communications between agencies and their

legal advisers, including governmental legal advisers.¹ The guidelines for a claim of legal professional privilege in these circumstances are as follows:²

- legal advice given by a qualified lawyer employed by the government can be privileged;
- for the privilege to attach, the legal adviser must be acting in his/her capacity as a professional legal adviser;
- the giving of the advice must be attended by the necessary degree of independence;
- the dominant purpose of the communication was the giving or receiving of legal advice or for use in actual or anticipated litigation; and
- the advice must be confidential.

Having regard to the guidelines on the application of section 42, the content of the document and DEEWR's advice that the document was prepared for the purpose of providing legal advice, I consider the document is exempt from release under section 42 of the FOI Act on the basis that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Deletion of exempt matter or irrelevant material

Section 22 of the FOI Act provides that exempt matter or irrelevant material may be deleted from a copy of a document, and access granted to such an amended copy, where it is reasonably practicable to do so, unless it is apparent that the applicant would not wish to have access to such a copy. Section 22 of the FOI Act is extracted at Attachment B.

I consider that it is reasonably practicable to make a copy of the documents with the matter I have found to be exempt or irrelevant deleted, and that the applicant would wish to be granted access to copies of the documents with deletions. The irrelevant material that I have deleted from the documents does not relate to Mr He or to the terms of Mr He's FOI request.

Access to copies of documents

I understand that copies of the documents that can be released to the applicant in accordance with this decision will be provided to the applicant with this decision.

Review and complaint rights

I understand information about the applicant's rights of review and complaint concerning my decision will be provided with this decision.



Alex Anderson
Assistant Secretary
Legal Policy Branch
30 September 2011

¹ Australian Government Solicitor, *Freedom of Information Guidelines—Exemption Sections in the FOI Act*, 9 October 2009, [13.6.1].

² *Ibid*, [13.6.1]-[13.6.2].

**FOI/2009/032 – MR DAMING HE – DOCUMENTS RELATING TO CORRESPONDENCE WITH THE PRIME MINISTER –
SCHEDULE OF DOCUMENTS**

Doc	Date	Description	Decision
1	30/04/2010	Letter from Mr Daming He to the FOI Co-ordinator, Department of the Prime Minister and Cabinet (the Department) enclosing a \$30 cheque for application fee and requesting review of decision of Mr Alex Anderson (Assistant Secretary (AS) Legal Policy Branch (LPB)) on remission of application fee.	Release.
2	14/04/2010	Letter from Mr Anderson to Mr He advising of a decision not to remit the application fee.	Release.
3	19/03/2010	Email from Mr Angelo Anagnostis, A/g Senior Adviser LPB, to Mr Anderson, advising of telephone correspondence with Mr He, with additional email traffic attached.	Release.
4	March 2010	Draft letter from Mr Anderson, to Mr He advising of a decision not to remit the application fee.	Release.
5	03/12/2009	Email from Mr Anagnostis to Ms Kim Huegill, Adviser LPB, regarding liaising with the decision maker, with additional email traffic attached.	Release.
6	03/12/2009	Email from Mr Anagnostis to Mr He regarding timing of response, with additional email traffic attached.	Release.
7	19/11/2009	Email from Mr Anagnostis to Mr Michael Cooley, Senior Adviser, Prime Minister's Office (PMO), regarding the definition of 'PMO', with additional email traffic attached. (Including attachment document 8)	Release.
8	Unknown	(Attachment to document 7) Draft letter to Mr He in response to email correspondence.	Release.
9	11/11/2009	Email from Mr Christopher Webb, Ministerial Support Unit (MSU) to Mr Anagnostis regarding suggested changes to proposed response to Mr He, with additional email traffic attached (Including attachment document 10)	Release.
10	Unknown	(Attachment to document 9) Draft letter to Mr He, including tracked changes regarding the Department's response to email correspondence.	Release.
11	15/10/2009	Email from Ms Huegill to Mr Anagnostis containing email correspondence from Mr Webb in relation to a proposed response to an email enquiry from Mr He, with additional email traffic attached.	Release.
12	13/10/2009	Email from Ms Claire Pitham, Director, Information Coordination & Planning, MSU to Ms Huegill and Mr Matt Darcy, MSU containing suggestions on a	Release.

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		proposed response to an email enquiry from Mr He.	
13	27/10/2009	Email from Ms Huegill to Ms Pitham and Mr Webb arranging a meeting to discuss comments made on proposed response to an email enquiry from Mr He.	Release.
14	23/09/2009	Email from Mr Anagnostis to Ms Huegill seeking comments on proposed response to Mr He from MSU, with additional email traffic attached.	Release.
15	Unknown	Hand written timeline of correspondence with Mr He.	Release.
16	08/09/2009	Email from Mr He to Ms Huegill, LPB, in response to transfer of request from the Prime Minister Office (PMO) to the Department, with additional email traffic attached.	Release.
17	27/08/2009	Email from Ms Huegill, LPB, to Mr He seeking clarification of terms, with additional email traffic attached.	Release.
18	27/08/2009	Email from Mr MacDowell, SA, LPB, to Ms Huegill, LPB, regarding attempted telephone contact with Mr He, and the need to contact Mr He via email, with additional email traffic attached.	Release.
19	25/08/2009	Email from Mr He to Ms Huegill, LPB, in response to a letter from Mr Dave Macgill, with additional email traffic attached.	Release.
20	21/08/2009	Email from Ms Huegill, LPB, to Mr He terminating any further correspondence unless documents required are specified, with additional email traffic attached.	Release.
21	20/08/2009	Email from Mr MacDowell, SA, LPB to Ms Huegill, LPB, providing words necessary to prepare a response to Mr He's inquiry.	Release.
22	10/08/2009	Email from Ms Huegill, LPB, to Mr MacDowell, SA, LPB enclosing an email inquiry from Mr He, with additional email traffic attached.	Release.
23	07/08/2009	Email of inquiry from Mr He to Ms Huegill, LPB.	Release.
24	03/08/2009	Email from Ms Huegill, LPB, to Mr He in relation to his email of 28 July 2009.	Release.
25	03/08/2009	Email from Mr MacDowell, SA, LPB to Ms Huegill, LPB, providing instructions on a response to Mr He's email of 28 July 2009	Release.
26	20/07/2009	Letter from Mr MacDowell, SA, LPB to Mr He notifying of transfer of request from PMO to PM&C and seeking clarification of terms of the request.	Release.
27	17/07/2009	Draft Letter from Mr MacDowell, SA, LPB to Mr He with hand written	Release.

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		annotations from Mr MacDowell.	
28	17/07/2009	Email from Mr MacDowell, SA, LPB to Mr Jose, PMO, confirming deletion of one paragraph of a response letter to Mr He, with additional email traffic attached.	Release with exempt parts deleted under section 36 of the FOI Act.
29	23/02/2009	Letter from Ms Adams, SA, PMO to Mr He in response to his letter of 1 January to the Prime Minister.	Release.
30	01/01/2009	Letter from Mr He to the Prime Minister in response to a letter from Ms Rebecca Irwin of 16 December 2008, including attachment - document 31.	Release.
31	23/08/2006	(Attachment to document 30) Letter from Mr James Ruddie, Deputy Victorian Government Solicitor to Mr He in relation to special leave sought from the High Court.	Release.
32	15/07/2009	Email from Mr Jose, SA, PMO to Mr MacDowell, SA, LPB agreeing to transfer Mr He's request to PM&C, with additional email traffic attached.	Release with exempt parts deleted under section 36 of the FOI Act.
33	15/07/2009	Email from Mr MacDowell, SA, LPB to Mr Jose, SA, PMO seeking transfer of the request to PM&C, with additional email traffic attached.	Release with exempt parts deleted under section 36 of the FOI Act.
34	13-14/07/2009	Slipstream notes containing details of correspondence with Mr He.	Release.
35	08/05/2009	Letter from Mr He to the Prime Minister in response to letter from Ms Adams of 23 February 2009, including attachment document 36 and 37.	Release.
36	15/02/2007	(Attachment to document 35) Letter from Hon, Marsha Thompson MP to Hon Phillip Ruddock, Attorney General in support of waiving application fee for request.	Release.
37	Unknown	(Attachment to document 35) Information from Mr He's personal blog	Release.
38	Unknown	Hand written chronology of Mr He's matters.	Release.
39	Unknown	Signatory Guidelines – Correspondence to be prepared for Prime Minister's signature.	Release.
40	23/02/2009	Letter from Ms Sarah Adams, SA, PMO to Mr He giving notice of termination of correspondence.	Release.
41	10/02/2009	DRAFT Letter from Ms Sarah Adams, SA, PMO to Mr He edited by Andreas Heger.	Release.
42	10/02/2009	DRAFT Letter from Ms Sarah Adams, SA, PMO to Mr He edited by Priyanga Hettiarachi.	Release.

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43	10/02/2009	DRAFT Letter from Ms Sarah Adams, SA, PMO to Mr He last edited by Alex Anderson, AS, LPB.	Release.
44	01/01/2009	Letter from Mr He to the Prime Minister in response to a letter from Ms Rebecca Irwin of 16 December 2008, including attachment – document 45	Release.
45	23/08/2006	(Attachment to document 44) Letter from Mr James Ruddle, Deputy Victorian Government Solicitor to Mr He in relation to special leave sought from the High Court.	Release.
46	10/02/2009	Slipstream Screenshot – From Ms Priyanga Hettiarachi, PMO, to Mr Alex Anderson, AS, LPB.	Release.
47	10/02/2009	Slipstream Screenshot – From Mr Alex Anderson, AS, LPB.	Release.
48	24/02/2009	Slipstream Screenshot – From Mr Greg Foster, PMO.	Release.
49	23/02/2009	Slipstream Screenshot – Dismissal Laws, correspondence from Ms Irwin, PMO.	Release.
50	23/02/2009	Slipstream Screenshot	Release.
51	23/02/2009	Slipstream Screenshot	Release.
52	23/02/2009	Slipstream Screenshot	Release.
53	23/02/2009	Slipstream Screenshot	Release.
54	23/02/2009	Slipstream Screenshot	Release.
55	23/02/2009	Slipstream Screenshot	Release.
56	16/12/2008	Letter from Ms Irwin, SA, PMO to Mr He in response to letter 9 September 2008.	Release.
57	14/10/2008	DRAFT Letter from Ms Irwin SA, PMO to Mr He, last edited by Ms Emma Shadbolt.	Release.
58	14/10/2008	DRAFT Letter from Ms Irwin SA, PMO to Mr He, last edited by Mr Ross Broad.	Release.
59	15/12/2008	DRAFT Letter from Ms Irwin SA, PMO to Mr He, last edited by Mr Anderson, AS, LPB.	Release.
60	09/09/2008	Letter from Mr He to the Prime Minister in response to Alex Anderson's letter of 26 August.	Release.
61	16/12/2008	Slipstream Screenshot	Release.
62	16/12/2008	Slipstream Screenshot	Release.
63	16/12/2008	Slipstream Screenshot	Release.

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64	16/12/2008	Slipstream Screenshot	Release.
65	16/12/2008	Slipstream Screenshot	Release.
66	16/12/2008	Slipstream Screenshot	Release.
67	16/12/2008	Slipstream Screenshot	Release.
68	17/12/2008	Slipstream Screenshot	Release.
69	06/11/2008	Slipstream Screenshot	Release.
70	13/10/2008	Slipstream Screenshot	Release.
71	08/10/2008	Slipstream Screenshot	Release.
72	07/07/2008	Letter from Mr Anderson, AS, LPB, to Mr He notifying that further correspondence will not receive a reply.	Release.
73	12/08/2008	Letter from Mr Anderson, AS, LPB, notifying Mr He that the PM is unable to assist.	Release.
74	26/08/2008	Letter from Mr Anderson, AS, LPB, notifying Mr He that the PM is unable to assist.	Release.
75	07/07/2008	Letter from Mr He, to The Hon Kevin Rudd MP.	Release.
76	15/05/2008	Letter from Mr John Carter, Secretary, Senate Standing Committee on Education, Employment and Workplace Relations to Mr He informing of committee's decision to take no action.	Release.
77	24/06/2008	Email from Mr He, to Mr Carter (and others) in response to Mr Carters email	Release.
78	26/08/2008	Slipstream Screenshot	Release.
79	26/08/2008	Slipstream Screenshot	Release.
80	26/08/2008	Slipstream Screenshot	Release.
81	26/08/2008	Slipstream Screenshot	Release.
82	26/08/2008	Slipstream Screenshot	Release.
83	26/08/2008	Slipstream Screenshot	Release.
84	26/08/2008	Slipstream Screenshot	Release.
85	25/07/2008	Slipstream Screenshot	Release.
86	13/08/2008	Slipstream Screenshot	Release.
87	07/10/2008	Email from Mr Ross Broad, LPB, to Mr Jack Corbett, DEEWR, regarding unfair dismissal correspondence in relation to Mr He.	Release.
88	07/10/2008	Email from Mr Broad, LPB, to Mr Corbett, regarding unfair dismissal	Release with irrelevant material deleted

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		correspondence in relation to Mr He, with additional email traffic.	under section 22 of the FOI Act.
89	02/10/2008	Email from Mr Corbett to Mr Broad, regarding response to Mr He.	Release.
90	02/10/2008	Email from Mr Corbett to Mr Broad, regarding response to Mr He.	Release.
91	10/10/2008	Email from Mr Corbett to Mr Broad, containing DEEWR's response.	Release.
92	22/01/2008	Email from Mr He, to the Hon Julia Gillard MP, with additional email traffic attached.	Release.
93	10/01/2008	Email from Mr Gavin Ryan, Office of Senator Gavin Marshall, to Ms Sarah Adams regarding Mr He.	Release with exempt parts deleted under section 36 of the FOI Act.
94	03/03/2008	Email from Mr He, in response to a reply from the Hon Julia Gillard MP.	Release.
95	09/01/2008	Letter from Mr Jonathan Kirkwood, Chief of Staff to the Commonwealth Attorney General (AG) to Mr He.	Release.
96	11/12/2007	Emails from Mr He, to AG.	Release.
97	24/04/2008	Letter from Ms Sue Sadauskas, to Mr He in response to emails of 9 January 2008 and 3 March 2008.	Release.
98	22/01/2008	Brief from Mr Peter Cully, AS, Workplace Relation Legal Group, DEEWR, to Ms Sarah Adams, SA, PMO.	Exempt in full under section 36 and section 42 of the FOI Act.
99	Unknown	Australian Government fact sheets on unfair dismissal.	Release.
100	02/10/2008	Email from Mr Corbett, to Ms Meredith Bryant.	Release.
101	09/09/2008	Letter from Mr He to the Hon Kevin Rudd MP.	Release.
102	10/10/2008	Email from Mr Corbett, to multiple recipients.	Release.
103	unknown	Australian Government fact sheets on unfair dismissal.	Release.
104	10/10/2008	Email from Mr Corbett, to Ms Meredith Bryant.	Release.
105	13/10/2008	Email from Mr Corbett, to Mr Broad.	Release with irrelevant material deleted under section 22 of the FOI Act.
106	13/10/2008	Email from Mr Corbett, to Mr Broad.	Release with irrelevant material deleted under section 22 of the FOI Act.
107	02/10/2008	Email from Mr Broad, to Mr Corbett.	Release.
108	02/10/2008	Email from Mr Broad, to Mr Corbett.	Release.
109	02/10/2008	Email from Mr Broad, to Mr Shane Dixon regarding slipstream correspondence.	Release.
110	02/10/2008	Email from Mr Broad, to Mr Dixon.	Release.

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111	07/10/2008	Email from Mr Broad, to Mr Corbett.	Release with irrelevant material deleted under section 22 of the FOI Act.
112	07/10/2008	Email from Mr Broad, to Mr Corbett.	Release with irrelevant material deleted under section 22 of the FOI Act.
113	08/10/2008	Email from Mr Broad, to MCU regarding extension of time.	Release.
114	14/10/2008	Email from Mr Broad, to Ms Emma Shadbolt.	Release.
115	17/12/2008	Email from Mr Broad, to Ms Anna Dziedzic, LPB.	Release.
116	17/12/2008	Email from Mr Broad, to Ms Dziedzic, LPB.	Release.
117	15/12/2008	Email from Ms Dziedzic, LPB, to Mr Anderson, AS, LPB.	Release.
118	09/12/2008	Email from Ms Dziedzic, LPB, to Mr Anderson, AS, LPB.	Release.
119	24/09/2008	Email from Ms Dziedzic, LPB, to Mr Broad.	Release.
120	24/09/2008	Email from Ms Dziedzic, LPB, to Mr Broad.	Release.
121	15/09/2008	Email from Ms Dziedzic, LPB, to Ms Kim Huegill, LPB.	Release.
122	09/09/2008	Attachment to document 121. Letter from Mr He, to Hon Kevin Rudd MP.	Release.
123	16/12/2008	Email from Ms Dziedzic, LPB, to Mr Anderson, AS, LPB.	Release.
124	14/10/2008	Email from Ms Shadbolt, to Mr Anderson, AS, LPB.	Release.
125	14/10/2008	Email from Ms Shadbolt, to Mr Anderson, AS, LPB.	Release.
126	24/09/2008	Email to Mr Broad, LPB.	Release.
127	15/12/2008	Email from Mr Anderson, AS, LPB, to Ms Dziedzic, LPB.	Release.
128	23/04/2009	Email from Ms Huegill, LPB, to Mr Anderson, AS, LPB.	Release.
129	16/12/2009	(Attachment to Document 128) Letter from Ms Rebecca Irwin, to Mr He.	Release.
130	April 2009	(Attachment to Document 128) Draft letter from Natalie, LPB, to Mr He.	Release.
131	24/04/2009	Email from Ms Natalie McKivat LPB, to Priyanga Hetiariachi and others.	Release.
132	26/09/2006	Letter from the Attorney-General, the Hon Philip Ruddock MP, to Mr He.	Release.
133	28/04/2006	Letter from Mr Iain Gentle, Australian Government Solicitor, to Mr He.	Release.

Extracts from the *Freedom of Information Act 1982*

22 Deletion of exempt matter or irrelevant material

- (1) Where:
- (a) an agency or Minister decides:
 - (i) not to grant a request for access to a document on the ground that it is an exempt document; or
 - (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and
 - (b) it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:
 - (i) would not be an exempt document; and
 - (ii) would not disclose such information; and
 - (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy;

the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

- (2) Where access is granted to a copy of a document in accordance with subsection (1):
- (a) the applicant must be informed:
 - (i) that it is such a copy; and
 - (ii) of the ground for the deletions; and
 - (iii) if any matter deleted is exempt matter because of a provision of this Act—that the matter deleted is exempt matter because of that provision; and
 - (b) section 26 does not apply to the decision that the applicant is not entitled to access to the whole of the document unless the applicant requests the agency or Minister to furnish to him or her a notice in writing in accordance with that section.

36 Internal working documents

- (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act:
- (a) would disclose 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; and

(b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in subsection 9(1), the matter referred to in paragraph (1)(a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in subsection 9(1).

(5) This section does not apply to a document by reason only of purely factual material contained in the document.

(6) This section does not apply to:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a prescribed body or organization established within an agency;

or

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

(7) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 26 shall state the ground of public interest on which the decision is based.

42 Documents subject to legal professional privilege

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in subsection 9(1) is not an exempt document by virtue of subsection (1) of this section by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in subsection 9(1).