



Kathryn J Richards

Dear Ms Richards

**Decision on your Freedom of Information request**

I refer to your request dated 25 May 2018 and received by the Department of Agriculture and Water Resources (**department**) on 29 May 2018 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

1. When the agency first became aware and/or was advised of the possibility of 91 Beardy St and/or adjoining lots and/or properties being available for use by the Commonwealth Government (including APVMA) including copies of information showing when and/or how such availability became known to the Commonwealth Government and the Commonwealth Government's response to such information. This aspect of my request includes representations made by intermediaries and/or agents.
2. The outcomes and information supplied from JLL Corporate Solutions to the department as per HANDSARD report : Rural and Regional Affairs and Transport Legislation Committee ANSWERS TO QUESTIONS ON NOTICE Supplementary Budget Estimates October 2016 Agriculture and Water Resources QUESTION 193 QUESTIONS ON NOTICE The department has engaged JLL Corporate Solutions to administer a nonbinding expression of interest process to explore long-term accommodation options for the APVMA in Armidale, and associated costs. This work is still underway. As at 9 November 2016, JLL had carried out work for the department at a cost of \$13 607.20 (including GST).
3. Any representations made by 3rd parties, including politicians, in relation to the site and/or adjoining sites and possible use by the Commonwealth and any response by the Commonwealth.
4. Any assessment and/or appraisal and/or evaluation and/or advice in relation to the suitability of the site and/or adjoining sites for use by the Commonwealth Government including any issues and/or advice about possible legal issues relating to leases and/or ownership of the site and/or adjoining sites.'

On 7 June 2018, the Australian Pesticides and Veterinary Medicines Authority (**APVMA**) accepted transfer of points three and four of your request in accordance with section 16 of the FOI Act. As such, this decision relates only to points one and two of your request.

## My decision

The department holds 12 documents (totalling 174 pages) that relate to your request.

I have decided to **refuse access** to these documents.

I have decided that the documents that you have requested are exempt in full under the FOI Act, because they contain:

- deliberative matter, the disclosure of which would be contrary to the public interest (section 47C(1) conditional exemption);
- information in relation to the property or financial interests of the Commonwealth, the disclosure of which would have a substantial adverse effect and be contrary to the public interest (section 47D conditional exemption);
- personal information of a third party, the disclosure of which would be unreasonable and contrary to the public interest (section 47F(1) conditional exemption); and
- business information, the disclosure of which would, or could reasonably be expected to, unreasonably affect a person adversely and contrary to the public interest (section 47G conditional exemption).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision, including the relevant sections of the FOI Act.

## Charges

On 26 June 2018, the department made a preliminary estimate of the charges applicable to your request in the amount of \$520.60. On 25 July 2018, the department received a deposit of \$130.15.

I have assessed the charge under Regulation 10 of the *Freedom of Information (Charges) Regulations 1982* and the cost of processing your request exceeded the amount estimated. Accordingly, I have fixed the charge under this provision.

As all documents in your request are exempt in full, there are no documents to release to you on payment of the balance of the charge.

## You can ask for a review of our decision

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

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

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

**Contact details**

Should you wish to discuss any issues arising from this letter, please email [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Yours sincerely

Julie Gaglia  
Assistant Secretary  
AgVet Chemicals Branch  
24 August 2018



## LIST OF DOCUMENTS

### LEX-016

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1 - 3	Undated	Project Option Master List	Exempt in full	S 47C(1) S 47D S 47F(1) S 47G	Pages 1 - 3: deliberative material exempt under s 47C(1) Pages 1 - 3: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 1 - 3: personal information exempt under s 47F(1) Pages 1 - 3: business information exempt under s 47G
2.	4 - 21	7/10/16	Correspondence from a third party to the department and attachment	Exempt in full	S 47D S 47F(1) S 47G	Pages 4 - 21: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 4 and 15 - 18: personal information exempt under s 47F(1) Pages 4 - 21: business information exempt under s 47G

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
3.	22 - 37	30/09/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 22 - 37: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 22 and 30: personal information exempt under s 47F(1) Pages 22 - 37: business information exempt under s 47G
4.	38 - 50	7/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 38 - 50: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 38, 39 and 50: personal information exempt under s 47F(1) Pages 38 - 50: business information exempt under s 47G
5.	51 - 106	7/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 51 - 106: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 51, 52, 72, 102, 103 and 105: personal information exempt under s 47F(1) Pages 51 - 106: business information exempt under s 47G

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
6.	107 - 117	7/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 107 - 117: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 107, 112, 116 and 117: personal information exempt under s 47F(1) Pages 107 - 117: business information exempt under s 47G
7.	118 - 121	6/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 118 - 121: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 118 - 120: personal information exempt under s 47F(1) Pages 118 - 121: business information exempt under s 47G
8.	122 - 132	7/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 122 - 132: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 122, 123 and 127: personal information exempt under s 47F(1) Pages 122 - 132: business information exempt under s 47G
9.	133 - 136	7/10/16	Correspondence from third parties to the department	Exempt in full	S 47D S 47F(1) S 47G	Pages 133 - 136: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 133 and 136: personal information exempt under s 47F(1) Pages 133 - 136: business information exempt under s 47G

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
10.	137 - 164	7/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 137 - 164: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 137 and 151: personal information exempt under s 47F(1) Pages 137 - 164: business information exempt under s 47G
11.	165 - 172	17/10/16	Correspondence from a third party to the department and attachments	Exempt in full	S 47D S 47F(1) S 47G	Pages 165 - 172: information in relation to the property or financial interest of the Commonwealth exempt under s 47D Pages 165 and 167 - 172: personal information exempt under s 47F(1) Pages 165 - 172: business information exempt under s 47G
12.	173 - 174	Undated	Map detailing options near Armidale CBD	Exempt in full	S 47G	Pages 173 - 174: business information exempt under s 47G



## **REASONS FOR DECISION**

### **What you requested**

1. When the agency first became aware and/or was advised of the possibility of 91 Beardy St and/or adjoining lots and/or properties being available for use by the Commonwealth Government (including APVMA) including copies of information showing when and/or how such availability became known to the Commonwealth Government and the Commonwealth Government's response to such information. This aspect of my request includes representations made by intermediaries and/or agents.
2. The outcomes and information supplied from JLL Corporate Solutions to the department as per HANDSARD report : Rural and Regional Affairs and Transport Legislation Committee ANSWERS TO QUESTIONS ON NOTICE Supplementary Budget Estimates October 2016 Agriculture and Water Resources QUESTION 193 QUESTIONS ON NOTICE The department has engaged JLL Corporate Solutions to administer a nonbinding expression of interest process to explore long-term accommodation options for the APVMA in Armidale, and associated costs. This work is still underway. As at 9 November 2016, JLL had carried out work for the department at a cost of \$13 607.20 (including GST).
3. Any representations made by 3rd parties, including politicians, in relation to the site and/or adjoining sites and possible use by the Commonwealth and any response by the Commonwealth.
4. Any assessment and/or appraisal and/or evaluation and/or advice in relation to the suitability of the site and/or adjoining sites for use by the Commonwealth Government including any issues and/or advice about possible legal issues relating to leases and/or ownership of the site and/or adjoining sites.'

### **What I took into account**

In reaching my decision I took into account:

- your original request dated 25 May 2018;
- other correspondence with you;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;
- whether the release of material is in the public interest;
- consultations with departmental officers about the nature of the documents and the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**);
- the FOI Act.



## **Reasons for my decisions**

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

I have decided that all documents in scope of your request are exempt under the FOI Act. My findings of fact and reasons for this decision are discussed below.

### **Section 47C(1) of the FOI Act – deliberative matter**

I have applied the exemption in section 47C(1) of the FOI Act to all of document one.

Section 47C of the FOI Act relevant provides:

**'(1) A document is conditionally exempt if its disclosure under this 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:**

- (a) an agency; or**
- (b) a Minister; or**
- (c) the Government of the Commonwealth.'**

Paragraph 6.58 of the Guidelines relevantly provides:

**A deliberative process involves the exercise of judgement in developing and making a selection from different options:**

**The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have bearing upon one's course of action. In short, deliberative processes involved in the functions of an agency are thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.**

Document one is a project option master list created for the purpose of assisting the department in making a selection from different options for the site of the APVMA office in Armidale, New South Wales. The document contains the specifications of each of the sites proposed by relevant providers, as well as a draft assessment of the tender requirements against the information submitted by the relevant providers. On this basis, I am satisfied that document one contains deliberative matter for the purposes of section 47C(1) of the FOI Act. I am further satisfied that document one is conditionally exempt under section 47C(1) of the FOI Act.

### ***Public interest considerations***

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

**'The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.'**

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

- promote the objects of the FOI Act;
- inform debate on a matter of public importance, being the relocation of the APVMA; and
- promote effective oversight of public expenditure in relation to the APVMA office in Armidale.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice the department's thinking processes in relation to future proposals or decisions if the documents resulting from such deliberations were available through the FOI process.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

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

#### *Conclusion*

In summary, I am satisfied that document one, as set out in the Schedule, is conditionally exempt in full under section 47C(1) of the FOI Act. Furthermore I have decided that on balance it would be contrary to the public interest to release this information. Accordingly I have decided not to release the document to you.

#### Section 47D of the FOI Act – property or financial interests of the Commonwealth

I have applied the exemption in section 47D of the FOI Act to the entirety of documents one to eleven.

Section 47D of the FOI Act provides:

**'A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.'**

Paragraph 6.90 and 6.92 of the Guidelines provides:

**'The financial and property interest of the Commonwealth or an agency may relate to assets, expenditure or revenue-generating activities**

...

**A substantial adverse effect may be indirect. For example, where disclosure of documents would provide the criteria by which an agency is to assess tenders, the agency's financial interest in seeking to obtain the best value for money through a competitive tendering process may be compromised.'**

As set out above, document one is a project option master list containing a draft assessment of the tender requirements against the information submitted by the relevant providers. Documents two to twelve are submissions received from various providers in response to the Expression of Interest for office accommodation for the APVMA in Armidale which set out the details of the provider's proposal against the tender requirements.

I am satisfied that the material set out in documents one to eleven relates to the financial and property interests of the Commonwealth, specifically the proposed expenditure of public monies in relation to the relocation of the APVMA to Armidale. I am further satisfied that the disclosure of these documents would have a substantial adverse effect on this proposed expenditure as it may prejudice the department's ability to obtain best value for money through competitive tendering processes in future. As such, I am satisfied that the disclosure of documents one to eleven would have a substantial adverse effect on the financial and property interests of the Commonwealth.

#### *Public interest considerations*

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

- promote the objects of the FOI Act;
- inform debate on a matter of public importance, being the relocation of the APVMA; and
- promote effective oversight of public expenditure in relation to the APVMA office in Armidale.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which the disclosure of the document could reasonably be expected to prejudice the Commonwealth's ability to obtain best value for money in relation to future tender processes.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the document is outweighed by the public interest against disclosure.

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

#### *Conclusion*

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

Section 47F of the FOI Act – personal information

I have applied the conditional exemption in section 47F(1) to documents one to eleven.

Section 47F of the FOI Act relevantly provides:

- '(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
  - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.'

*Personal Information*

The term 'personal information' is defined as follows:

'...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.'

Paragraph 6.117 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that documents one to eleven contain personal information of other people. This includes their names, contact details and signatures.

*Whether disclosure is 'unreasonable'*

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.127 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

I am satisfied that the disclosure of the third party personal information would be unreasonable for the following reasons:

- it relates to aspects of an individual's personal affairs;
- you do not have the consent from this individual for the release of their personal information;
- the information is private and not available in full or in part from publicly-accessible sources; and
- the identity of the individual concerned is readily apparent or could be easily ascertained.

On this basis, I have decided that the personal information included in documents referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

#### *Public interest considerations*

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

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

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

#### *Conclusion*

In summary, I am satisfied that parts of documents, as set out in the Schedule, are conditionally exempt under section 47F(1) of the FOI Act. Furthermore I have decided that on balance it would be contrary to the public interest to release this information. Accordingly I have decided not to release the documents in full to you.

#### Section 47G of the FOI Act – business information

I have applied the exemption in section 47G of the FOI Act to documents one to twelve in their entirety.

Section 47G of the FOI Act provides:

'A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) 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

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.'

Paragraph 6.189 and 6.190 of the Guidelines provide:

The [Administrative Appeals Tribunal] has said, for example, that there is a strong public interest in knowing whether public money was accounted for at the appropriate time and in the manner required; and in ensuring that public programmes are properly administered.

The AAT has distinguished between 'truly government documents' and other business information collected under statutory authority. The first category includes documents that have been created by government or that form part of a flow of correspondence and other documents between the government and business. The AAT concluded that such documents inclined more to arguments favouring scrutiny of government activities when considering whether disclosure would be unreasonable. By implication, the exemption is more likely to protect documents obtained from third party businesses.

As set out above, document one is a project option master list and documents two to twelve are submissions received from various providers in response to the Expression of Interest. Document three is a map of Armidale detailing the precise addresses and locations of the proposed options for the APVMA office.

I am satisfied that the documents contain the information in relation to the relevant providers concerning their business, commercial or financial affairs. Specifically, the documents include detailed information about each of the sites proposed by the providers, as well as the terms of proposed commercial leases. These documents and information contained in the document were obtained from third party businesses for the purposes of selecting the site of the APVMA office in Armadale. Following consultations with the relevant providers, I am further satisfied that the disclosure of the material in these documents would, or could reasonably be expected to unreasonably affect the provider adversely in respect of their business, commercial or financial affairs. As such, I am satisfied that documents one to twelve are conditionally exempt in full under section 47G of the FOI Act.

#### *Public interest considerations*

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

- promote the objects of the FOI Act;
- inform debate on a matter of public importance, being the relocation of the APVMA; and
- promote effective oversight of public expenditure in relation to the APVMA office in Armidale.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to adversely affect a number of provider's lawful businesses.

Based on these factors, I have decided that in this instance, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

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

#### *Conclusion*

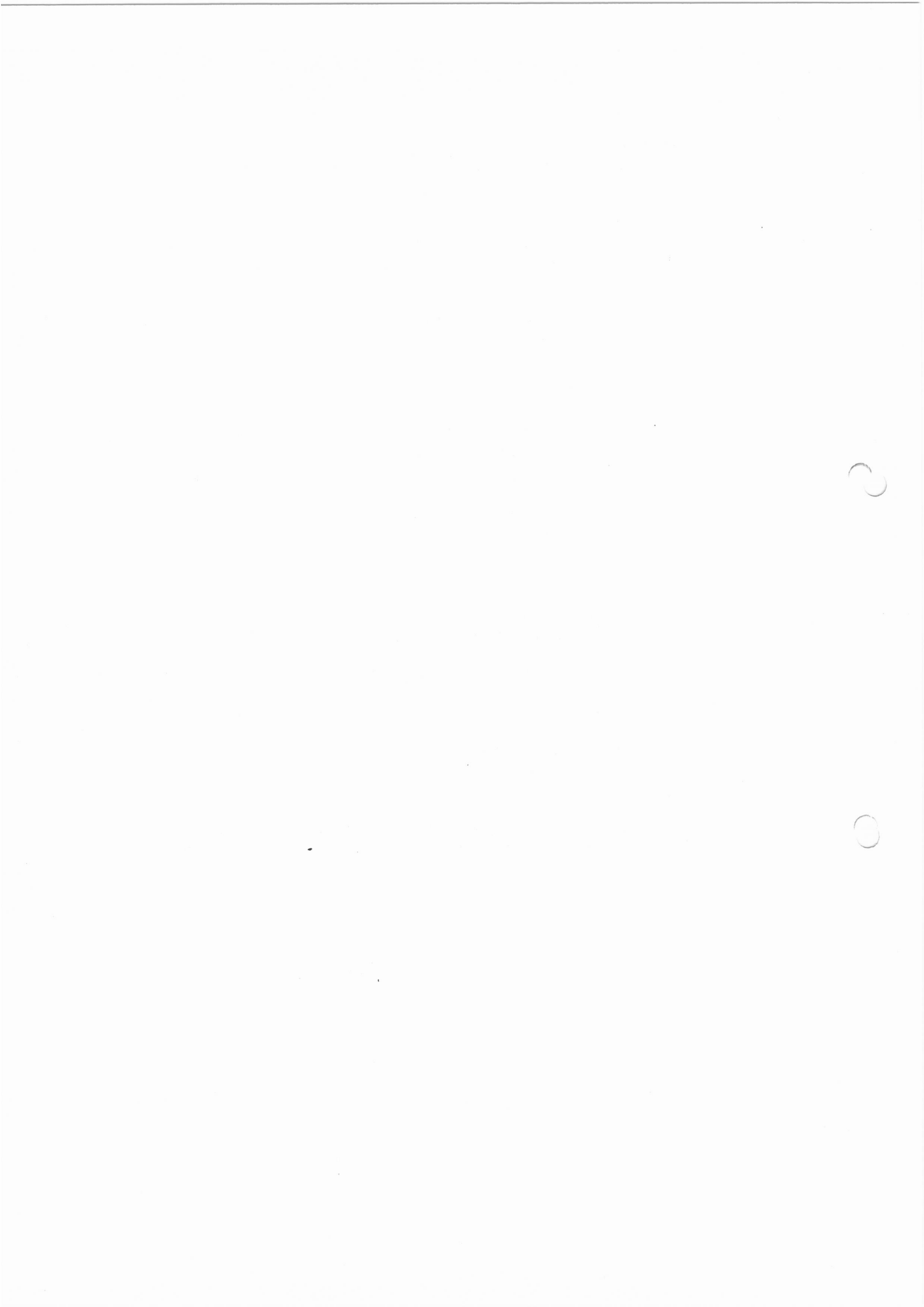
In summary, I am satisfied that the documents as set out in the Schedule, are conditionally exempt in full under section 47G of the FOI Act. Furthermore I have decided that on balance it would be contrary to the public interest to release this information. Accordingly I have decided not to release the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

#### **Summary of my decision**

In conclusion, I have decided to refuse access to documents one to twelve.

I have decided that:

- document one is conditionally exempt, in full, under section 47C(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5);
- documents one to eleven are conditionally exempt, in full, under section 47D of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5);
- documents one to eleven are conditionally exempt, in part, under section 47F(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5); and
- documents one to twelve are conditionally exempt, in full, under section 47G of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).





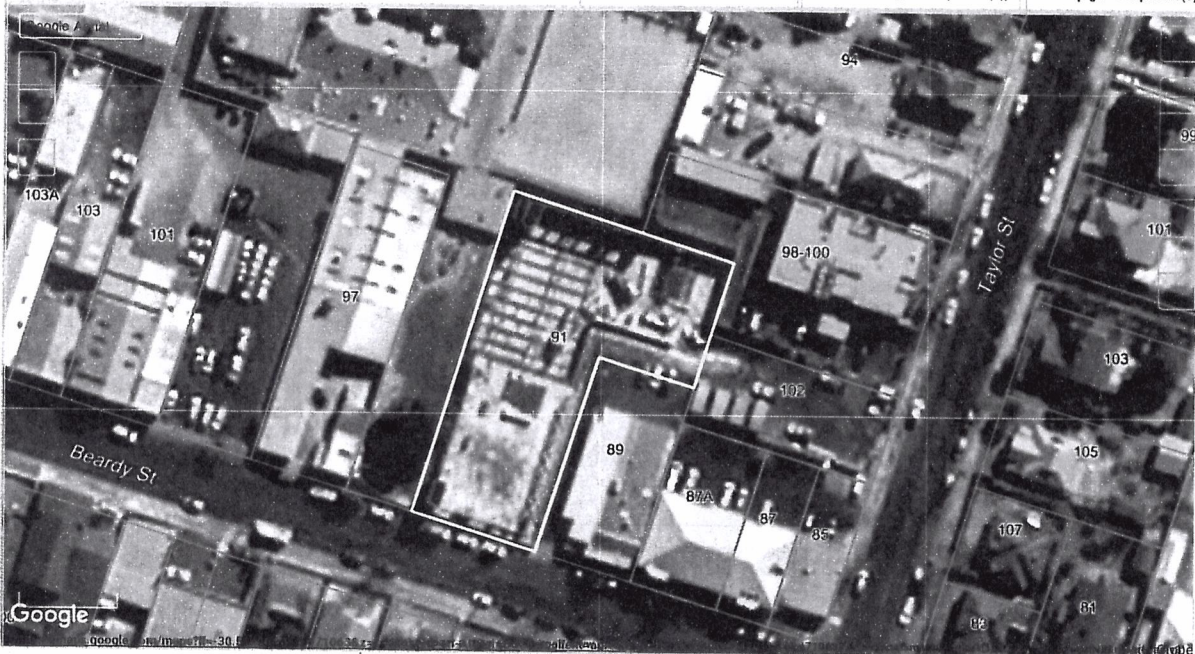
### Property Detail

[Back to search results](#) [Print this Page](#) [Next](#)

91 Beardy Street Armidale, NSW, 2350

10 2,351m<sup>2</sup>

[Collapse](#) [Main Photo \(javascript:void\(0\)\)](#) [Street View \(javascript:void\(0\)\)](#) [Map \(javascript:void\(0\)\)](#)



#### Property Attributes

10 2,351m<sup>2</sup>

[Update Data](#)

Property Type: Commercial

#### Last Sale Details

Sale Price: \$1,375,000

Sale Date: 19 Mar 2018

Settlement Date: 13 Apr 2018

Land Use 1: Vacant Urban Land

Zoning: Business

#### Legal Description

RPD: LOT 1 DP1044207

LA: Armidale Regional

Issue Date: May 18

Fee Code: Sole Owner

Owner Code: Corporation

#### Land Values

No information available.

#### Ownership

**STIRLOCH DEVELOPMENTS PTY LTD**

[/rpp/search/company/property/summary.html?&view=property&q=company&newSearch=true&q=STIRLOCH DEVELOPMENTS PTY LTD](#)

#### Property Tasks

[Customise Tasks](#)

- [Signature CMA Report](#)
- [Comparable Sales Report](#)
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**Property Features**

**Other Features**

- **Development Zone:** Mixed Use
- **Property Improvements:** Vacant Land

**Sales History**

Transfer Date	Sale Type	Sale Price	Vendor Name	Sold By	Tenure Code
19 Mar 2018	Multi-Sale	\$1,375,000	Burgess Bayfoyle Pty Limited		Sole Owner
21 Dec 2012		\$400,000	The Armidale Club Ltd	Professionals Freedom Realty	Sole Owner

**On The Market History - For Sale**

[Property Listing](#)

[Agency Campaigns](#)

No information available.

**On The Market History - For Rent**

No information available.

**Phone Records**

No information available.

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