

Department of Primary Industries, Parks, Water & Environment

POLICY DIVISION

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Our ref: 029/2013-14
Your ref:



Mr Clive Stott

Dear Mr Stott

Right to Information Decision

I refer to your application made pursuant to the *Right to Information Act 2009* ('the Act'), which was received by the Department of Primary Industries, Parks, Water and Environment (DPIPWE) on 11 April 2014 and accepted on the same day. Specifically, you requested:

"Air quality data and information gathered recently by Tasmanian EPA air staff in and around Morwell in Victoria."

Section 7 of the Act gives a person a legally enforceable right to be provided, in accordance with the Act, with information in the possession of a public authority or a Minister unless the information is exempt information. The Department of Primary Industries, Parks, Water and Environment (DPIPWE) is a public authority under the Act.

A search of DPIPWE's records located a total of 2.16 GB of information comprising 357 files contained on one CD which is relevant to your application. It has been necessary for me to assess this information against Part 3 of the Act to determine whether any of it is exempt information.

Decision Summary

I have decided that all of the information is exempt information. The reasons for my decision are discussed below.

Information communicated by other jurisdictions

I have decided that all of the information is exempt information under section 34(1) of the Act ('Information communicated by other jurisdictions').

Section 34(1)(a) of the Act states:

1) *Information is exempt information if –*

(a) *its disclosure under this Act would prejudice relations between –*

- (i) two or more States; or*
- (ii) a State and the Commonwealth; or*
- (iii) the Commonwealth or a State and any other country ...*

and its disclosure would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.

Following the recent coal mine fires in the Morwell district of Victoria, the Victorian EPA requested the Tasmanian EPA's assistance to provide them with technical data related to the distribution of air smoke pollution possibly related to the event. Release of the information by DPIPW ahead of its release by the Government that requested it would be reasonably likely to impair the ability of the Tasmanian Government to enter into reciprocal arrangements with the Victorian Government in the future.

Section 34 belongs to a class of exemption that is dependent on a 'public interest test' specified in section 33 of the Act. For information to be exempt under section 34 it must satisfy the requirements of the section and be contrary to the public interest to disclose it, considering all relevant matters including those listed in Schedule 1 of the Act.

In arriving at my decision I consider the following matters listed in Schedule 1 of the Act to be most relevant:

- (a) the general public need for government information to be accessible;*
- (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;*
- (c) whether the disclosure would provide the contextual information to aid in the understanding of government decisions; and*
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future.*

In this case (a) constitutes the main public interest argument in favour of disclosure of the information while matters (b), (c) and (n) are the main public interest arguments against disclosure.

There is a general principle that government information should be accessible. The information being assessed for disclosure is related to matters affecting public health and as such is of interest to the public.

However, matters (b), (c) and (n) are considerations against disclosure under the circumstances for the reasons outlined below.

The information in question consists of air quality monitoring data relevant to the Morwell coal mine fire in Victoria in February 2014. It comprises raw data without any interpretative information and disclosure would not contribute in any meaningful way to inform debate on the issue at hand. The information does not include recommendations for immediate action and is not therefore informative as to the reasons for a decision or the contextual information to aid in the understanding of Government decisions.

EPA Victoria is managing the post-incident process for the Morwell coal mine fire including the future release of data and the provision of any contextual information. Disclosure of the information at hand, prior to the conclusion of EPA Victoria's incident review process, would therefore likely prejudice relations between the Tasmanian and Victorian Governments and prejudice the ability to obtain similar information in the future.

On balance I find that it would be contrary to the public interest to disclose the information and consequently that it qualifies as exempt information under section 34(1)(a) of the Act.

Review right

You have the right under section 45(1)(a) of the Act to apply for a review of this decision. To apply for a review you must write to the Ombudsman within 20 working days of receiving this notice. Please address your correspondence to:

The Ombudsman
GPO Box 960
Hobart TAS 7001

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Whittington', written over a horizontal line.

John Whittington

Principal Officer under the *Right to Information Act 2009*

21 May 2014