



Environment Protection Authority

GPO Box 2607 Adelaide SA 5001

T (08) 8204 2004

Country areas 1800 623 445

EPA FOI-20-01

Hon Leon Bignell MP

Via email

mawson@parliament.sa.gov.au

Dear Mr Bignell

I refer to your application under the *Freedom of Information Act 1991* (the FOI Act), received by the Environment Protection Authority (EPA) on 18 November 2020, for access to:

1. *Documents that advised the Minister regarding the holders of EPA license number 32682.*
2. *Documents that relate to approval of works at Southern Waste ResourceCo's site at Tatchilla Road, McLaren Vale.*
3. *Documents that relate to Southern Waste ResourceCo's site at Tatchilla Road, McLaren Vale.*

The below amended scope was provided by your office on 26 November 2020:

1. *Documents that advised the current Minister regarding the holders of EPA license number 32682*
2. *Documents that relate to all work applications and approvals at Southern Waste ResourceCo's site at Tatchilla Road McLaren Vale, specifically:*
 - *The original application for an authorisation and any application to change their operating process, site details or plant and equipment and related approvals*
 - *Application for license renewal*
 - *Application for licence annual return*

On 8 December 2020, the EPA's Principal Officer, Mr Tony Circelli, advised you that he had determined that, pursuant to section 14A of the FOI Act, the due date to respond to your request of 19 December 2020 would be extended to 19 May 2021. Your application required searching through a large amount of information and is for access to a large number of documents. Consultation was required with third parties to seek views regarding the release of documents identified (section 14A(1)(a) and (b)).

I apologise for the delay in processing your request. As you are aware, the FOI has involved an extensive search of records and the consultation process has also been significant for the EPA and Southern Waste ResourceCo. I can however confirm that the EPA has waived processing fees. This FOI determination is also made outside of the time provided under the extension of time and is therefore made pursuant to section 19(2a) of the FOI Act.

Following a search of EPA records I have determined that 208 documents fall within the scope of your application. In accordance with the FOI Act, the EPA has conducted third party consultations to obtain views regarding the release of documents. As part of these consultations, Southern Waste ResourceCo (SWR) has undertaken extensive analysis of the large number of documents and provided its views on the release of the documents. The EPA is considering SWR's views regarding claims for exemption and the release of documents.

In order to expedite the provision of some documents to you, I have undertaken a determination of Documents 1 to 33 relating to:

1. *Documents that advised the current Minister regarding the holders of EPA license number 32682*
 - *The original application for an authorisation and any application to change their operating process, site details or plant and equipment*
 - *Application for license renewal*
 - *Application for licence annual return*

The EPA will provide a determination on the remaining 175 documents relating to 'all work applications and approvals' for the SWR site at McLaren Vale in due course, following consideration of exemptions from release claimed by SWR.

Section 20(4) of the FOI Act provides that if it is practicable to give access to a copy of a document with exempt matter deleted, and it appears that the applicant would wish to be given such a copy, the agency must give access to a copy of the document to this limited extent. Therefore, I have determined to grant you partial access to various documents as listed in the attached document schedule, and redacted the remaining parts of those documents that I consider to be exempt.

Determination

In relation to Documents 1 to 33, the Environment Protection Authority determines to:

- Grant full access to 5 documents.
- Grant partial access to 19 documents.
- Refuse access to 9 documents

The reasons I have refused access to certain parts of documents are summarised in the attached document schedule and explained in more detail below.

Clause 7 of Schedule of the FOI Act, Documents affecting business affairs

- (1) A document is an exempt document –
 - (a) if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or
 - (b) if it contains matter –
 - (i) consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and
 - (ii) the disclosure of which –
 - (A) could reasonably be expected to destroy or diminish the commercial value of the information; and
 - (B) would on balance, be contrary to the public interest; or
 - (c) if it contains matter –
 - (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and

(ii) the disclosure of which—

(A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and

(B) would, on balance, be contrary to the public interest.

Documents 18, 23, 24, 25, 26, 27, 28, 29, 30, 32 and 33 contain matter that relate to the business, professional, commercial or financial affairs of an agency or another person under clause 7(1)(c) of Schedule 1 of the FOI Act. I have determined that, on balance, disclosure of this information could reasonably be expected to have an adverse effect on those affairs. Public interest factors taken into account are described below. The exempt content of these documents has been redacted.

Clause 17 of Schedule 1 of the FOI Act, Documents subject to contempt etc

A document is an exempt document if it contains matter the public disclosure of which would, but for any immunity of the Crown –

- (a) constitute contempt of court; or
- (b) contravene any order or direction of a person or body having power to receive evidence on oath; or
- (c) infringe the privilege of Parliament

Documents 1, 3, 4, 6, 9, 11, 12, 14 and 15 contain matter the public disclosure of which would infringe the privilege of Parliament. Access to these documents has been refused.

Information out of scope of the FOI application

Documents 2, 5, 7, 8, 10, 13, 16 and 17 contain matters considered out of the scope of this FOI application. This information has subsequently been redacted.

Public interest factors considered

In making this determination I have also taken the following public interest factors into consideration:

Pro release

- Pro-release of documents meets the objects of the FOI Act
- Documents relating to environmental issues are in the public interest
- Documents relating to the regulation of licenced sites are in the public interest
- Whether the documents provide insight into the regulatory operations and accountability of the EPA
- What information is already in the public domain, such as details already available on the EPA's public register

Against release

- A business's financial information should remain confidential
- The release of mobile phone numbers may have an adverse effect on current and former employees

On balance, the reasoning against release for portions of documents outweighed the public interest factors for release.

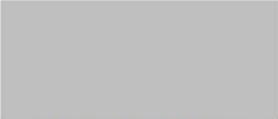
Right of appeal

If you are dissatisfied with this determination you are entitled to apply for an internal review in accordance with section 29 of the FOI Act. To make an internal review application, please either write a letter or send the attached form to the Chief Executive of the Environment Protection Authority, Mr Tony Circelli, within 30 (calendar) days after you receive this letter. Should you submit an application for an Internal Review, please include an application fee of \$38.25, or request a fee waiver.

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your FOI application, and the documents to which you are given access, may be published in the EPA's disclosure log. A copy of PC045 can be found at <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>

Should you have any queries in relation to this determination please contact Ms Kathleen Dean Freedom of Information / Public Register Administrator on 8204 2113 or email kathleen.dean@sa.gov.au.

Yours sincerely



Suzanne Behrendt
Accredited Freedom of Information Officer
General Manager People and Performance
Environment Protection Authority

Date: 3 August 2021