

TASMANIAN OMBUDSMAN



Freedom of Information Review under s 48 of the *Freedom of Information Act 1991*

CLIVE STOTT AND FORESTRY TASMANIA
Case Reference: 0700-0809045

REASONS FOR DECISION

The FOI request

On 22 April 2008 Mr Stott requested information from Forestry Tasmania (FT) under the *Freedom of Information Act 1991* (the FOI Act) in the following terms:

All information for the last 14 months to do with Forestry Tasmania's knowledge of lighting of fires in Tasmania. This is to include the dates & times of the burns, map locations, wind direction & speed, area burnt, amount of wood burnt, tons of smoke released, notifications of burns by Gunns Ltd or any other forestry business/enterprise; Duration of burns until extinguished. Planned or accidental/deliberate.

FT responded to the request on 5 May 2008 by stating that the information required was potentially exempt under s 20 (requests may be refused in certain cases) of the FOI Act. FT stated that if Mr Stott was able to 'streamline' his request to be more specific then it might be able to release information to him. Mr Stott issued an amended request on 15 May 2008 as follows:

*Dates and Times of all planned industry-wide forestry burns in Tasmania.
Map locations including plannedburntas.com daily maps
Wind direction and speed
Area burnt
Amount of wood burnt
Tons of smoke released
Notifications of burns by Gunns Ltd. Or any other forestry business/enterprise
Duration of burns until extinguished*

The decision on the request

On 28 May 2008 FT provided a report to Mr Stott showing coupe names, dates, area burnt and completed date of all FT planned burns for the previous 12 months. In relation to the balance of the information requested, FT stated that it did not hold much of the information sought but the information it did hold would require the collation of in excess of 3, 000 documents across a number of offices at a cost 'approaching \$7,000'. FT stated that if Mr Stott wished to 'particularise' or review his request then FT would be 'happy to further consider the identification and release of such information'. FT determined that the request still fell within s 20 of the FOI Act.

After a period of negotiation between the parties, FT released further information to Mr Stott on 17 July 2008 and stated what information in the request it did not hold. FT stated it would be able to provide copies of a limited number of burn documents at a charge of \$5 each.

After further negotiation between the parties, Mr Stott amended his request again to include all individual burn documents for the Bass, Mersey and Murchison Districts.

Dr Drielsma released further information on 8 August 2008 after third party consultation about notifications of planned burns from other forest companies. Dr Drielsma reiterated that Mr Stott's request still fell within s 20 of the FOI Act as there were a total of 235 coupes in the districts listed in the amended request.

On internal review on 28 August 2008, Bob Gordon determined that under s 20 (1) of the FOI Act FT would refuse to provide all individual burn plans, however FT would produce a 'reasonable number of these plans' for \$5 each.

Mr Stott applied under s 48 of the FOI Act for a review of FT's decision.

Submissions by FT

A request was made by this Office to provide submissions as to why FT was satisfied that the work involved in providing the information requested would 'substantially and unreasonably divert the resources' of FT from its other work. Specific detail was requested as follows:

1. what constitutes a burn plan;
2. the size of each burn plan;
3. where each burn plan is located;
4. whether each burn plan is contained on a central data base; and
5. whether a hard copy of each burn plan is available.

Dr Drielsma provided submissions on 15 October 2008. He stated that a burn plan consists of information in a pro-forma template with supporting documents. The burn plans vary from 10-12 sheets to a file several centimetres thick depending on the size and complexity of the operation. The burn plans are filed in District offices and are a component of a coupe file. They are likely to be interleaved with harvesting and roading information relevant to the coupe. Dr Drielsma stated that to retrieve the information from each burn plan would require collating and retrieving information from nearly 400 burn plans across five of FT's District Offices. He estimated that the total time taken would be 15 days which he considered to be an unreasonable diversion of FT's resources.

Submissions by Mr Stott

Mr Stott submitted that the charge proposed by FT should be waived under s 17 (1) (g) of the FOI Act because he was reliant on a disability pension and suffers a chronic health condition which requires costly daily medication. Further, that he intended to make the information available to the general public.

This review

This review was originally on two grounds. The first ground was that Mr Stott's request had been refused as the work involved in providing the information he had requested would substantially and unreasonably divert the resources of FT from its other work. The second ground was that FT had set a charge for the requested information at \$5 per burn plan.

In relation to the first ground, I note that FT gave Mr Stott a reasonable opportunity to consult FT with a view to him being helped to make a request in a form that would remove the ground for refusal as required under s 20 (4) of the FOI Act.

The first ground was addressed when FT was asked by this Office to indicate what would be a 'reasonable' number of burn plans so as the work involved in providing the information would not substantially and unreasonably divert the resources of FT from its other work. Dr Drielsma indicated on 3 March 2009 that FT would be prepared to access up to 20 burn plans for Mr Stott for which a fee of \$100 would be charged.

Mr Stott confirmed on 24 March 2009 that he would be prepared to accept 20 burn plans in full satisfaction of his FOI request provided they were from the Mersey District and that they related to last year's burn season (ie the 2008 burn season).

I now turn to the second ground. Mr Stott is claiming that the charge should be waived under s 17 (g) of the FOI Act as the intended use of the information requested is a use of 'general public interest or benefit' and in the alternative, that Mr Stott is impecunious. I note at this point that Mr Stott has provided sufficient evidence of his reliance on a disability support pension in the form of a scanned copy of his pension card showing that it is current.

Section 17 of the FOI Act provides for an Agency to charge for the release of information. I note that the charge sought by FT was not calculated in accordance with the provisions of the *Freedom of Information (Fees) Regulations 2004*.

A charge under s 17 can be waived or reduced in certain circumstances, including where the applicant's intended use of the information is a use of general public interest or benefit, or the applicant is impecunious. In relation to the meaning of impecuniosity, it is relevant to note that in Queensland, applicants who hold a concession card are eligible for waiver of charges made under the relevant FOI legislation on the ground of financial hardship. In NSW an applicant who holds a pensioner health benefit card is entitled to a 50% reduction in fees.

Under s 48 (4) of the FOI Act I have the same power when considering this application for review as FT had when considering the original application and I may make any decision in respect of this application for review that FT could have made in respect of the original application.

In exercising the discretion I have to waive charges under s 17, I have regard to s 3 (4) (b) of the FOI Act. This provision states that it is the intention of Parliament that any discretion which is conferred by the FOI Act be exercised 'so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information'. In my opinion, I should exercise my discretion in favour of an applicant who is reliant on a Commonwealth pension and I therefore determine that the charges set by FT should be waived. Having come to that conclusion, there is no need for me to determine if the use of the information at issue is a 'use of general public interest or benefit'.

Conclusion

I conclude that FT should provide 20 burn plans from the Mersey district from the 2008 fire season to Mr Stott with all charges otherwise payable under the FOI Act waived.

DATED: APRIL 2009

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SIMON ALLSTON
OMBUDSMAN