



SENATOR THE HON JANE HUME
MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND THE DIGITAL ECONOMY
MINISTER FOR WOMEN'S ECONOMIC SECURITY

Senator the Hon Slade Brockman
President of the Senate
Parliament House
Canberra ACT 2600

21 OCT 2021

Dear Mr President

I write with regard to Senator Order for the Production of Documents No. 1252 (the Order) moved by Senator Janet Rice and agreed by the Senate on Wednesday, 20 October 2021.

I enclose the Government's response to the Order, for tabling at your discretion.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jane Hume'.

Senator the Hon Jane Hume



PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

Senator the Hon Slade Brockman
President of the Senate
Parliament House
Canberra ACT 2600

Dear Mr President

I write with regard to the Senate Order for the Production of Documents No. 1252 agreed by the Senate on Wednesday, 20 October 2021.

Please refer to my correspondence of 2 September 2021 in response to Order for the Production of Documents No. 1217. I have enclosed a copy of this correspondence for reference.

Yours sincerely

Paul Fletcher

21/10/2021

Enc.



PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

Senator the Hon Scott Ryan
President of the Senate
Parliament House
Canberra ACT 2600

Dear Mr President

Further to my letter of 30 August 2021, I refer to the Senate Order for the Production of Documents agreed by the Senate on Monday, 23 August 2021 (the Order), requiring the tabling of documents discussed during a hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee on 19 July 2021 (the Hearing) and documents referenced in paragraphs 2.30 to 2.32 of the Auditor-General Report No.47 2020-21 *Administration of Commuter Car Park Projects within the Urban Congestion Fund* (the Report).

I note that this Order was directed to the Minister representing the Minister for Infrastructure, Transport and Regional Development however, the matters referred to in the Order relate to my portfolio responsibilities as Minister for Communications, Urban Infrastructure, Cities and the Arts. Accordingly, I request that you accept this correspondence in response to the Order.

Request for “any email or document setting out the list of ‘top twenty marginal seats’ as referred to by Mr Brian Boyd of the Australian National Audit Office on page 5 of the Hansard” of the Hearing

Based on this description, and the terms of the Order that are reliant on that description, neither I, nor my office, nor the Department of Infrastructure, Regional Development and Communications (my Department) has seen any document matching the description of the Order. As a result, I will not be able to table any documents pursuant to this clause of the Order.

Without having to hand any documents within the scope of the Order, it is not possible to determine whether the release of any such documents would be in the public’s interest, and for which any claim of public immunity may be made.

Request for any spreadsheets as referenced in paragraphs 2.30 to 2.32 of the Report

Pursuant to my letter to the Chair of the Senate Rural and Regional Affairs and Transport Legislation Committee of 4 August 2021, I claim public interest immunity over the requested spreadsheets referenced in clauses (b) and (c) of this Order on the grounds that the release of those spreadsheets would disclose the deliberations of Cabinet.

I have enclosed a copy of my letter to the Chair of the Senate Rural and Regional Affairs and Transport Legislation Committee for reference.


Request for “any maps or attached schedules referred to by Mr Boyd of the ANAO on page 8 of the Hansard” of the Hearing

Based on this description, and the terms of the Order that are reliant on that description, neither I, nor my office, nor my Department has seen any document matching the description of the Order. As a result, I will not be able to table any documents pursuant to this clause of the Order.

Without having to hand any documents within the scope of the Order, it is not possible to determine whether the release of any such documents would be in the public's interest, and for which any claim of public interest immunity may be made.

A copy of this correspondence has been provided to Senator the Hon Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy as the Minister representing me in the Senate, and to Senator Rice.

Yours sincerely



Paul Fletcher

2/9/2021

Enc.



PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

MS21-001186

Senator Susan McDonald
Chair
Rural and Regional Affairs and Transport Legislation Committee
Parliament House
Canberra ACT 2600

Dear Senator ^{Susan}

Public Interest Immunity Claim – Documents relating to the National Commuter Carpark Fund

I refer to letters to the Secretary of the Department of Infrastructure, Transport, Regional Development and Communications, Mr Simon Atkinson, from Senator Rice and Senator Sterle, requesting the tabling of legal advice and spreadsheets related to administration of the National Commuter Carpark Fund at the Rural and Regional Affairs and Transport Legislation Committee Hearing of 19 July 2021.

I understand that the Department has tabled information in response to Senator Rice's request for the Benefit Cost Ratio tool and details from the Infrastructure Management System on carpark projects.

Request for spreadsheets referred to in the Auditor General's Report no. 47 of 2020-21 'Administration of Commuter Car Park Projects within the Urban Congestion Fund'

I claim public interest immunity over the requested spreadsheets on the grounds that release of those spreadsheets would disclose the deliberations of Cabinet.

The confidence of Ministers now and into the future in the confidentiality of the Cabinet process would be diminished if the details of past Cabinet deliberations were to be disclosed prior to the open access period provided for in the *Archives Act 1983*. Disclosure of cabinet information prior to the open access period risks harm through a weakening of adherence by current and future Ministers to the formal process for confidentiality of policy proposals for consideration by Cabinet, draft and final Cabinet documents, briefing and record keeping of Cabinet.

Furthermore, unless Ministers can be assured of the confidentiality of Cabinet meetings, they may not speak freely or honestly between themselves and may be more likely to suppress their views on present policies that may be unpopular or politically challenging. Any of these outcomes would ultimately impact negatively on Australia's national interest.

Compromise of the confidentiality of Cabinet would cause current and future Ministers, as well as officials tasked to brief them about matters to be discussed, to apprehend that what was written for the purpose of Cabinet and what was discussed in meetings may not remain confidential, and therefore temper what they wrote or said in the course of Cabinet. This would undermine the process of decision-making and policy deployment in Australia, and could have a particularly chilling effect on the ability of Cabinet meetings to provide a forum in which comprehensive and candid discussion by Ministers could take place.

Request for legal advice received in relation to the treatment of carparks

I also claim public interest immunity over legal advice the Department has received in relation to the treatment of carparks under the *National Land Transport Act 2014*. These documents would be exempt from production in legal proceedings on the basis of legal professional privilege.

It has been the long-standing practice of successive Australian Governments not to disclose legal advice. This practice has previously been outlined by the Hon Gareth Evans QC:

...[n]or is it the practice or has it been the practice over the years for any government to make available legal advice from its legal advisers made in the course of normal decision making process of government, for good practical reasons associated with good government and also as a matter of fundamental principle... (Senate Hansard, 28 August 1995, page 466)

Then Senator, the Hon Joe Ludwig, put the position as follows:

To the extent that we are now going to go to the content of the advice, can I say that it has been a longstanding practice of both this government and successive governments not to disclose the content of advice. (Senate Legal and Constitutional Affairs Legislation Committee, Hansard of Estimates Hearing, 26 May 2011, page 161)

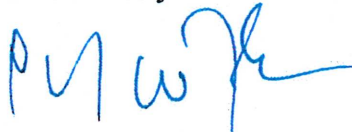
Similarly, the Hon Philip Ruddock MP stated:

...It is not the practice of the Attorney to comment on matters of legal advice to the Government. Any advice given, if it is given, is given to the Government... (House of Representatives Hansard, 29 March 2004, page 27405).

The Government maintains that it is not in the public interest to depart from this established position. It is essential that legal advice provided to the Commonwealth remains confidential. Access by Government to such confidential advice is, in practical terms, critical to the development of sound Commonwealth policy and robust law-making. Similarly, the disclosure of privileged legal advice may compromise the Commonwealth's legal position.

The specific harm that the doctrine of legal professional privilege seeks to prevent is the harm to the administration of justice that would result from the disclosure of confidential interactions between lawyer and client. Both the High Court of Australia and Federal Court of Australia have confirmed that legal professional privilege promotes the public interest by enhancing the administration of justice, facilitating freedom of consultation and encouraging full and frank disclosure between clients and their legal advisers.

Yours sincerely



Paul Fletcher

4 / 8 / 2021