

ONRSR Ref: 782535
Your Ref:

27 September 2017

Robert Hayden
RTBU NSW
4/321 Pitt Street
SYDNEY NSW 2000

National Office
PO Box 3461, Rundle Mall
ADELAIDE SA 5000
contact@onrsr.com.au
08 8406 1500
www.onrsr.com.au
ABN: 44 260 419 904

Dear Mr Hayden

Freedom of Information Request

I refer to your application made under the *Freedom of Information Act 1991* (the FOI Act) on 28 July 2017 for access to reports to the Regulator between 18 July 2016 and 18 July 2017 that relate to fatigue audits on NSW based operators, along with any related plans, processes and correspondence, and copies of lodged fatigue management plans. I acknowledge that you have agreed to significantly reduce the scope to 13 companies pursuant to an email from Alison Rudman on 7 August 2017.

I have determined to refuse access to the documents that fall within the scope of your application. The reasons I have refused access are summarised in the attached document schedule and are explained in more detail below.

Section 20(1) (a) of the FOI Act provides that an agency may refuse access to a document if it is an exempt document.

Documents 2, 8, 9, 22-28, 32, 38, 42 and 43 are exempt pursuant to clause 16(1). This is on the basis that these documents are audit reports of the ONRSR and could reasonably be expected to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency. Audits are undertaken pursuant to section 133 of the Rail Safety National Law (RSNL), and rail safety officers rely on the cooperation and openness of rail safety workers and rail transport operators in order to ascertain the level of compliance with the requirements of the RSNL. Without this, the ONRSR would need to compel the information which has other implications, and would not be in keeping with a 'co regulatory approach'. Given that we are dealing with transport operators, to disclose information such as this may mislead and encourage ill-informed speculation as to the safety of the railway operations of particular rail transport operators, or ability and competency of their staff, which would have adverse effects on the general public.

Additionally, it would be contrary to the public interest to release these documents as they are specific in nature, and provide a 'point in time' report on a rail transport operator's railway operations. The effectiveness of the audits are determined by the openness and transparency of the rail transport operator- it would be not in the public interest to have the efficient and economical conduct of the agency significantly affected by the disclosure.

Any regulatory decisions which may arise from an audit where statutory notices (such as an improvement notice) are issued are made public by way of the ONRSR National Rail Safety Register.

Documents 1,3,4,5,6,7,10-21, 29,30,31,33-37, and 39-41 are exempt pursuant to clause 13(1)(b). This is on the basis that all these documents were obtained using powers under the RSNL, which is deemed confidential under section 244 of the RSNL if documents or information are obtained as part of exercising any function or power under that Act. That provision does allow for disclosure if it is required or authorised by a law, including FOI. Despite this, it has still been determined that these documents contains matter obtained in confidence (as provided for in section 244 of the RSNL), the disclosure of which might reasonably be expected to prejudice the future supply of such information to an agency, and on balance be contrary to the public interest. Formal and informal exchange of information between a Regulator and the accredited rail transport operators are of utmost importance in a 'co-regulatory' environment. To disclose those documents, which rail transport operators would assume enjoy the protection of further disclosure save just to the Regulator, will create a relationship where they will not be willing to provide documents and evidence relating to matters such as fatigue and will require the regulator to compel the information by way of specific notices. Such an adversarial relationship will undermine the principles and functions contained within the RSNL, and defeat the purpose of the National Rail Safety Regulator.

In addition, it is contrary to the public interest as these documents are specific policies, working documents or procedures owned by the rail transport operators and only used by their employees and contracts. The disclosure of these documents and information would encourage ill-informed speculation and mislead as to the safety of the operations of the rail transport operator, or the fitness for work of the rail safety workers who undertake rail safety work on behalf of these operators.

This determination was made on 25 September 2017.

If you are unhappy 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 entitled *Application for Review of Determination* to the Principal Officer of this agency, Ms Sue McCarrey, within 30 (calendar) days after you receive this letter. Should you submit an application for an Internal Review, please include an application fee of \$34.25.

Should you require any further information please contact me on telephone (08) 8406 1562

Yours sincerely



Laura Paulus
Accredited FOI Officer

Encl: Document Schedule
Application for Review of Determination form

**Freedom of Information
DOCUMENT SCHEDULE**

File No - qA26765
Reference No ONRSR155481

Office of the National Rail Safety Regulator

FOI Application - Robert Hayden (RTBU NSW) - Fatigue Management Documents for particular NSW Operators – 18.07.16 to 18.07.17

	Brief Description	Date of Doc	Full Access	Part Access or Refused Access
1	Freightliner- CP 006 Fatigue Policy			Refused Clause 13(1)(b)
2	ONRSR Freightliner Final Compliance Audit Report	17 February 2017		Refused Clause 16(1)
3	Freightliner- Managing Fatigue in Work plans OP- 0003			Refused Clause 13(1)(b)
4	Freightliner- Aus Workplan Actual Hours/Fatigue Flow Chart OP-0013			Refused Clause 13(1)(b)
5	Freightliner- Managing Fatigue in Workplace Aus OP0056			Refused Clause 13(1)(b)
6	Freightliner- Hours Exception Report SF 0056			Refused Clause 13(1)(b)
7	Freightliner- Fatigue Management and sleep opportunity- SP 0002/6			Refused Clause 13(1)(b)
8	ONRSR Pacific National- Audit Report June 2016	20-21 June 2016		Refused Clause 16(1)
9	ONRSR Pacific National Audit Report September 2016	1-2 September 2016		Refused Clause 16(1)
10	PN Critical Fatigue Management			Refused Clause 13(1)(b)
11	PN Driver's Master Roster			Refused Clause 13(1)(b)
12	PN Drivers general operational risk			Refused Clause 13(1)(b)
13	PN- FAID version 2.0			Refused Clause 13(1)(b)

	Brief Description	Date of Doc	Full Access	Part Access or Refused Access
14	PN Fatigue Data for Adelaide	12 June 2016		Refused Clause 13(1)(b)
15	PN- Fatigue Management- Employee User Guide			Refused Clause 13(1)(b)
16	PN- Integrated Safety Management System- Policy B002.2			Refused Clause 13(1)(b)
17	PN- Fatigue Management- Port Augusta- Drivers Depot			Refused Clause 13(1)(b)
18	PN- Fatigue Management Supervisors and Managers User Guide			Refused Clause 13(1)(b)
19	PN- Intermodal Procedures Manual- Critical Fatigue Monitoring.			Refused Clause 13(1)(b)
20	PN- Master Roster			Refused Clause 13(1)(b)
21	PN- Reporting High Fatigue Breaches- Procedure			Refused Clause 13(1)(b)
22	ONRSR Aurizon- Compliance Inspection Report	7 December 2016		Refused Clause 16(1)
23	Aurizon- Advice- Response to fatigue inspection report	1 February 2017		Refused Clause 16(1)
24	Aurizon- Advice- Response to fatigue inspection report	17 March 2017		Refused Clause 16(1)
25	Aurizon- Email- Fatigue Inspection- Further queries	22 December 2016		Refused Clause 16(1)
26	Aurizon- Email- Provision of evidence for fatigue risk management	17 March 2017		Refused Clause 16(1)
27	Aurizon- Email- Provision of rosters relating to Mayfield Compliance inspection	9 January 2017		Refused Clause 16(1)
28	ONRSR Aurizon- Cover letter- Compliance inspection report	13 January 2017		Refused Clause 16(1)
29	Aurizon- Risk Assessment- Fatigue Management- Inspection	7 December 2016		Refused Clause 13(1)(b)
30	Aurizon- Saving Daily Roster with Fatigue Record- Inspection	7 December 2016		Refused Clause 13(1)(b)

	Brief Description	Date of Doc	Full Access	Part Access or Refused Access
31	Aurizon- Screen dump of intranet fatigue management page-inspection	7 December 2016		Refused Clause 13(1)(b)
32	ONRSR SCT- National Audit Report- 2016			Refused Clause 16(1)
33	SCT- PRO-040 Fatigue Management			Refused Clause 13(1)(b)
34	SCT- PRO- 060 Rostering Procedure			Refused Clause 13(1)(b)
35	SCT- Rail Operations Fatigue Risk Assessment			Refused Clause 13(1)(b)
36	SCT Crewing dated 21 November 2014			Refused Clause 13(1)(b)
37	Qube Logistics- PCE 112 Fatigue Management and Crew Rostering			Refused Clause 13(1)(b)
38	ONRSR Bowmans Intermodal- Audit Report- June 2016			Refused Clause 16(1)
39	Bowmans- XX Fatigue Management			Refused Clause 13(1)(b)
40	Bowmans- Change Management Plan and Risk Assessment- Application for Variation up to Parkes NSW			Refused Clause 13(1)(b)
41	Bowmans- SMS- Fatigue Management Standard			Refused Clause 13(1)(b)
42	ONRSR ESPEE Rail Road Service- National Audit 2015	10 February 2016		Refused Clause 16(1)
43	ESPEE- Email- Request for further information	11 January 2016		Refused Clause 16(1)

FOI FACT SHEET

Your Rights to Review and Appeal

South Australian Freedom of Information Act 1991

Please read the information in this fact sheet before completing the attached application form

INTERNAL REVIEW

If you are unhappy with a determination made by an agency (includes South Australian State Government Agency, Local Government Council or University) under the *Freedom of Information Act 1991* (FOI Act) in relation to:

- a freedom of information (FOI) application for access to a document, or
- an FOI application for amendment to your personal records

in most cases, you are entitled to apply for an Internal Review of that determination.

Request an Internal Review

An Internal Review must be lodged within 30 calendar days of you receiving advice of a determination that you are unhappy with.

Applications must be made in writing in accordance with Section 29 or Section 38 of the FOI Act or using the attached *FOI Application Form for Internal Review of a Determination* (Internal Review Form).

An Internal Review application must be made to the Principal Officer of the agency that made the determination you are seeking to have reviewed.

How much does an Internal Review cost?

There is an application fee of **\$34.25** that must be paid when you lodge your Internal Review application if your review request is for access to documents.

There is no application fee for an Internal Review of an FOI application for amendment to your personal records.

Agencies generally accept payment by cash, money order or cheque. If you would like to pay by credit card you will need to ask the agency if they are able to accept credit card payments.

If, as a result of an Internal Review an agency changes or reverses a determination so that access to a document is, or will be, given, the agency will refund the Internal Review application fee paid by the applicant, where applicable.

What if I have a concession card or can't afford to pay?

If you are the holder of a current concession card or if you can satisfy the agency that the payment of the application fee would cause financial hardship, the agency must waive or remit (reduce or refund) it.

If you are a concession cardholder you will need to provide evidence e.g. attach a copy of your concession card when you make the application. Alternatively you will need to give written reasons as to why the payment of a fee would cause you financial hardship.

How long does an Internal Review take?

You will be advised of the outcome of your Internal Review application within 14 calendar days of it being received by the agency.

If the agency does not deal with your Internal Review application within 14 calendar days (or you remain unhappy with the outcome of the Internal Review) you are entitled to an External Review

by the Ombudsman SA or the Police Ombudsman (if the determination was made by a police officer or the Minister for Police). Alternatively you may apply for a review by the South Australian Civil and Administrative Tribunal (SACAT). See the External Review section below.

When can't I apply for an Internal Review?

If the original application determination was made by the Principal Officer of an agency rather than another accredited FOI Officer within the agency, you cannot apply for an Internal Review. However, you can apply for an External Review by the Ombudsman SA, the Police Ombudsman, or apply for a review by SACAT.

EXTERNAL REVIEW

After an Internal Review has been completed, or where you are unable to apply for an Internal Review, and you are unhappy with the determination, you have the right to apply for an External Review.

Who should I apply to?

If the determination was made by a police officer or the Minister for Police you can apply to the Police Ombudsman. All other applications for External Review can be made to the Ombudsman SA.

How long will an External Review take and how much will it cost?

If you wish to make an application for an External Review you must do so within 30 calendar days after being notified of the determination. However, the Ombudsman SA or the Police Ombudsman can extend this time limit at their discretion. There is no fee or charge for External Reviews undertaken by either Ombudsman.

Contact Details:	
Ombudsman SA Phone: 8226 8699 Toll Free: 1800 182 150 (within SA) Email: ombudsman@ombudsman.sa.gov.au	Police Ombudsman Phone: 8226 8677 Email: policeombudsman@agd.sa.gov.au

REVIEW BY SACAT

You have a right to apply for a review by SACAT if you are unhappy with:

- a determination not subject to Internal Review
- an Internal Review determination, or
- the outcome of a review by the Ombudsman SA or the Police Ombudsman.

You must exercise your right of review with SACAT within 30 calendar days after being advised of the above types of determinations or the results of a review.

Any costs will be determined by SACAT, where applicable.

For more information contact SACAT.

Contact Details:
South Australian Civil and Administrative Tribunal (SACAT) Phone: 1800 723 767 Email: sacat@sacat.sa.gov.au

FOI APPLICATION FORM

For Internal Review of a Determination

Under sections 29 & 38 of the South Australian *Freedom of Information Act 1991*

Please read the attached '*FOI Fact Sheet – Your Rights to Review and Appeal*'
before completing and lodging your Internal Review application

To the Principal Officer	
Name of the Agency:	
Details of Applicant	
Surname:	
Given Names:	
Australian Postal Address:	
Suburb:	Post Code:
Emails (<i>Optional</i>):	
Contact phone numbers:	
FOI Application Reference Number (<i>if known</i>):	
Details of Internal Review	
<p>I am not satisfied with a determination made by your agency and, therefore, seek a review because:</p> <p><i>(Please place a tick in the appropriate box)</i></p> <ul style="list-style-type: none"><input type="checkbox"/> I have been refused access to a document<input type="checkbox"/> I have been refused access to part of a document<input type="checkbox"/> I have been refused a request to amend a personal document<input type="checkbox"/> I have been given access to a document but access has been deferred<input type="checkbox"/> I am a third party specified in the documents but have not been consulted about giving access to another person<input type="checkbox"/> I have been consulted but disagree with the determination to release the documents	

Comments

Include any additional comments you wish to be considered in the review of the determination (*attach additional pages if necessary*).

Fees and Charges

An application fee of **\$34.25** must be submitted with the Internal Review application form, unless you are seeking to have the application fee waived. If you are seeking to have the application fee waived, please attach evidence supporting why it should be waived, e.g. attach a copy of your concession card or other evidence as proof of financial hardship.

An application fee is not required for an Internal Review of an FOI Amendment Application.

In the following section please tick as appropriate

- Is the application fee attached? Yes No
- Application Fee is in the form of Cheque Cash Money Order
(Do not send cash through the mail)
- Do you require a fee waiver? Yes No
- Is evidence of the need to
waive fees attached? Yes No
(e.g. a copy of your concession card)

If you wish to pay your application fee via credit card you will need to ask the agency you are applying to if they accept credit card payments.

If no application fee is attached and you do not qualify for fee waiver, the agency cannot process your application until the fee has been paid.

If the agency varies or reverses a determination so that access to a document is, or will be, given the agency will refund any Internal Review fees paid by the applicant.

Applicant's Signature:

Date / / 20.....

OFFICE USE ONLY

Received on / / 20.....

Acknowledgment sent on / / 20.....