



25 July 2019

In reply please quote:

FOI Request: FA 19/02/01243

File Number: ADF2019/9080

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 19 February 2019, the Department of Home Affairs (the Department) received your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You requested access to the following documents:

- 1) *a summary document outlining the process used to appoint Paladin to provide services to refugees on Manus Island*
- 2) *a summary document of the officials who signed off on this decision and*
- 3) *any correspondence about the decision between the department and the relevant minister.*

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access, and
- advice from other relevant Commonwealth Departments.

4 Document in scope of request

You requested access to “*summary document[s] ...*”. The Department is not required to create a document to meet an FOI request. In considering the documents held by the Department, I had regard to the FOI guidelines, which state at paragraph 3.110:

A request can be described quite broadly and must be read fairly by an agency ... being mindful not to take a narrow or pedantic approach to its construction.

The Department considered what documents it holds that would satisfy your request. One document has been identified as falling within the scope of your request, namely:

Strategic Procurement Plan and Spending Proposal for the Provision of Garrison Services at the East Lorengau Refugee Transit Centre.

This document was in the possession of the Department on 19 February 2019 when your request was received.

5 Decision

The decision in relation to the document in the possession of the Department which falls within the scope of your request is to release one document in part with deletions.

6 Reasons for Decision

Detailed reasons for my decision are set out below. My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 22 of the FOI Act – irrelevant to request

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 20 February 2019, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have decided that parts of document marked ‘s22(1)(a)(ii)’ would disclose information that could reasonably be regarded as irrelevant to your request, and therefore prepared an edited copy of the document, with the irrelevant material redacted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the document has been considered for release to you as it is relevant to your request.

6.2 Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

The information contained in the documents relates to the Regional Processing Centres. Papua New Guinea (PNG) is a sovereign nation and the PNG government is responsible for regional processing in PNG.

I consider releasing the information marked 's33(a)(iii)' would adversely impact on the ability of the Department to maintain good working relations with the PNG Government. This assessment is made considering the nature of the information contained within the document and the current nature and extent of the Australian Government's relationship with the PNG government.

I have decided that the information redacted and marked 's33(a)(iii)' is exempt from disclosure under section 33(a)(iii) of the FOI Act.

6.3 Section 34 – Cabinet documents

Section 34(1)(c) of the FOI Act permits exemption of a document if it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies.

I sought advice from the Department of Prime Minister and Cabinet and note the advice contained within the Cabinet Handbook. The paragraphs below detail considerations to be taken into account when handling cabinet documents, with particular focus on the 'Confidentiality' aspect of all Cabinet proceedings and documentation.

28. All attendees are responsible for ensuring that what is considered by the Cabinet, when and how it does so, and the decision Cabinet reaches on particular matters remains confidential. Ministers and officials should not disclose proposals likely to be considered at forthcoming meetings outside Cabinet-approved consultation procedures. Nor should they disclose the nature or content of the discussions or the views of individual ministers expressed at the meeting itself.

29. Obviously general information about what has been decided by the Cabinet is, on occasions, released into the public domain by persons authorised to do so. But this does not detract from the importance of allowing the Prime Minister or the Cabinet itself to decide what is disclosed publicly about any decision they have reached.

30. Effective Cabinet confidentiality requires the protection of Cabinet deliberations not only at the time an issue was current but also in the future. Ministers in successive governments have relied on the convention that their views, either written or spoken will remain confidential well into the future. It is only with the confidence in this convention that ministers can enjoy freedom to explore all policy options without the need to temper their comments or views.

A strong Cabinet system is fundamental to well-informed decision making and policy development by the Government. The convention of the collective responsibility of Ministers for government decisions is central to the Cabinet system of Government. Cabinet is a forum in which Ministers, while working towards a collective position, are able to discuss proposals, options and views with complete freedom. This requires that Cabinet deliberations are treated confidentially.

I am satisfied that parts of the document contain information which, if disclosed, would reveal Cabinet deliberations and information that has not, to date, been officially disclosed.

I have decided that parts of the document are exempt under section 34(1)(c).

6.4 Section 47 of the FOI Act – Commercially valuable information

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I am satisfied that parts of the document contain information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

I am also satisfied that the information contained within the document is valuable for the purpose of carrying on the commercial activities in which an entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

I have decided that parts of the document are exempt from disclosure under section 47 of the FOI Act.

6.5 Section 47E of the FOI Act – Operations of Agencies

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I consider that the disclosure of the parts of the document marked 's47E(d)' would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Department.

The information relates to ongoing procurement activities, and the disclosure of this information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of those procurement activities.

I decided that parts of the document are conditionally exempt under section 47E(d) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.8 below.

6.6 The public interest – section 11A of the FOI Act

As I decided that information contained in the document is conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A)
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow a person to access his or her own personal information.

Having regard to the above:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does have some character of public importance and would inform debate and would be of interest to some sections of the general public.
- I consider that oversight of public expenditure would be provided through examination of the document.
- The document will not provide you with access to your own personal information so this factor is not relevant in the circumstances.

I also considered the following factors that weigh against the release of the conditionally exempt information in the document:

- Disclosure of the parts of the document which are conditionally exempt under section 47E(d) of the FOI Act, could reasonably be expected to prejudice the operations of the Department so far as they relate to ongoing procurement activities. It is in the public interest to ensure that the ability of the Department, and the government more broadly, to conduct procurement activities is not compromised or prejudiced in any way. I consider that this would be contrary to the public interest and that this factor weighs against disclosure.

I also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- b) access to the document could result in any person misinterpreting or misunderstanding the document
- c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made
- d) access to the document could result in confusion or unnecessary debate.

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

By email to: foi.reviews@homeaffairs.gov.au
OR
By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:
Phone 1300 363 992 (local call charge)
Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Authorised Decision Maker
Department of Home Affairs