



14 November 2019

In reply please quote:

FOI Request: FA 17/11/01121

File Number: OBJ2019/21851

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 28 November 2017, the Department of Immigration and Border Protection received a 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.

1 Scope of request

On 28 November 2017, you requested access to the following documents:

- *All documented information outlining the process by which Request for Tender from the private sector to provide Sydney, London and Ottawa Service Centre services for the Department of Immigration and Border Protection*
- *All documented information outlining the timeframe for the aforementioned Request for Tender process to occur*
- *All documented information relating to which private companies may take on the work of the Sydney, London and Ottawa Service Centre services*
- *All Ministerial Briefs and Question Time Briefs relating to the outsourcing of the Sydney, London and Ottawa Service Centre*
- *All documented information relating to the Visa Services Market Consultation*
- *All documented information relating to the timeframe in which the Visa Services Market Consultation will occur*
- *All Ministerial Briefs and Question Time Briefs relating to the Visa Services Market Consultation.*

On 19 January 2018, you agreed to revise the scope of your request to the following:

1. *All documented information outlining the process by which Request for Tender from the private sector to provide Sydney, London and Ottawa Service Centre services for the Department of Immigration and Border Protection (Home Affairs) since 01/01/17*
2. *All documented information outlining the timeframe for the aforementioned Request for Tender process to occur 01/01/17*
3. *All Ministerial Briefs and Question Time Briefs relating to the outsourcing of the Sydney, London and Ottawa Service Centre since 01/01/17*
4. *All Ministerial and Question Time briefs relating to the Visa Market Services consultation and request for tender process since 1/1/17*

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 documents or to amend or annotate records.

I acknowledge the processing of this request has taken an unacceptable length of time, for which I apologise.

I note that while the request is formally deemed to have been refused, the Department's practice is nevertheless to continue processing such requests.

The processing of this request has been complicated by its broad scope, notwithstanding the refinement from the original request, and my decision to revisit the document search process more than once to ensure the scope of your request has been properly understood and all relevant documents have been located. This process has necessitated repeated consultation with other Commonwealth agencies. The processing time has also been impacted by the volume of work involved in managing the implementation of the call centre transition process, and has been further delayed by the absence of key officials on extended leave and reassignment.

As part of addressing these underlying issues, I have directed that all staff in my division receive refresher training in record keeping and freedom of information request processes.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents 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 documents to which you sought access
- advice from other Commonwealth Departments.

4 Documents in scope of request

The Department has identified 15 documents as falling within the scope of your request.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release 14 documents in part with deletions
- Exempt 1 document in full from disclosure

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

6 Reasons for Decision

Detailed reasons for my decision are set out below. Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, 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 29 November 2017, 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.

In addition, some part of the documents capture information that could reasonably be regarded as not relevant to your request, in that it does not relate to the process or the timeframe for the Request for Tender.

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

The remainder of the documents have been considered for release to you as they are relevant to your request.

6.2 Section 34 – Cabinet documents

Section 34 of the FOI Act permits exemption of a document if it has been submitted to the Cabinet for its consideration, or was brought into existence for the dominant purpose of briefing a Minister on such a document, or contains information that a disclosure of which would reveal a not officially disclosed Cabinet deliberation or decision.

At the time the Cabinet submissions were created, they were brought into existence for the dominant purpose of briefing the Minister for Immigration and Border Protection on a submission to Cabinet.

I have 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.

The documents contain information which, if disclosed, would reveal Cabinet deliberations and information that has not, to date, been officially disclosed. Accordingly, I am satisfied that the documents are exempt under section 34 of the FOI Act.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'¹

The documents contain opinion and deliberations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of the Department. Some matters would be subject to Government consideration and/or legislative change, therefore I consider the material to be deliberative material.

¹ See JE Waterford and Department of Treasury (No 2) [1984] AATA 67.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

I have decided that the information is conditionally exempt under section 47C 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 have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

6.4 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 documents 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.

Managing the security and integrity of Australia's borders is integral to the operations of the Department. Any prejudice to the effectiveness of the operational methods and procedures used in undertaking that role would result in a substantial adverse effect on the operations of the Department.

Any disclosure resulting in the prejudice of the effectiveness of the Department's operational methods and procedures would result in the need for this Department, and potentially its law enforcement partners, to change those methods and/or procedures to avoid jeopardising their future effectiveness.

Some information marked 's47E(d)' consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. The Department has established channels of communication for members of the public into the Department, and I consider there is no public interest in disclosing these operational contact details. Given the operational focus of those business areas, such a diversion of the resources of that business area could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department and its partner agencies.

Accordingly, I have decided that the documents 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 have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

6.5 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in

a material form or not (refer to section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked section 47F in the documents would disclose personal information. The information that I regard to be personal information within the documents includes the names and contact details of persons unrelated to the Department.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in section 47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known*
- *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document*
- *the availability of the information from publicly available resources*
- *any other matters that I consider relevant.*

I am satisfied that the disclosure of the information within the documents would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F 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 have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard below.

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

As I have decided that parts of the documents are 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 have 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:

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

Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does have the character of public importance and that there may be broad public interest in the documents.
- I consider that an insight into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

- disclosure of the conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the ability of the Department to provide full and frank advice to its Minister in future Ministerial Submissions. I consider that there is a strong public interest in there being no hindering of that process. I am of the view that a precedent of public disclosure of advice given as a part of those deliberative processes would result in such concerns existing, which may then hinder future deliberations and decision making processes for the Department and the Government as a whole. I consider that the public interest in protecting the process of providing free and frank advice and recommendations in relation to discussions between the Department and its Minister has, on balance, more weight, that the public interest that might exist in disclosing the those actual deliberations.
- The disclosure of the information which is conditionally exempt under section 47E(d) of the FOI Act may have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. I consider that the ability of the Department to utilise email addresses which are not at risk of being maliciously targeted to be in the public interest.
- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of the personal information contained within these documents.

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

- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government

- access to the document could result in any person misinterpreting or misunderstanding the document
- 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
- 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 have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. 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 <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

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**

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*

FOI request: FA 17/11/01121

No	Date of document	No. of pages	Description	Decision on release	
1.	5/06/2017	40	Minister Submission - MS17-002065 Attachment A: Exempt in full Attachment B: Draft Market Consultation Paper	Release in part	22(1)(a)(ii) 34(1)(c)
2.	6/06/2017	7	Minute: Key Information and Approvals Required for Client Enquiry Services Request For Tender	Release in part	22(1)(a)(ii) 47C
	June 2017	459	Attachment A: Request for Tender (RFT) for the provision of Client Enquiry Services – DIBP RFT 11/16		
	6/06/2017	7	Attachment B: Procurement Plan for Client Enquiry Services		
	6/06/2017	33	Attachment C: Evaluation and Probity Plan for Client Enquiry Services		
3.	24/7/2017	35	Evaluation and Probity Plan for Client Enquiry Services	Release in part	22(1)(a)(ii)
4.	18/09/2017	2	Minute – Client Enquiry Services Procurement : Documentation Approvals	Release in part	22(1)(a)(ii) 47C
		7	Attachment A: Procurement Plan		
		34	Attachment B: Evaluation and Probity Plan		
			Attachment C: Out of scope		
			Attachment D: Out of scope		
5.	18/09/2017	5	Minister Submission – MS17-004039 Attachment A: not released	Release in part	22(1)(a)(ii) 47C

No	Date of document	No. of pages	Description	Decision on release	
6.	15/09/2017	4	Incoming Deputy Secretary Minute – Client Enquiry Services Procurement – Key dates and documentation Attachments 1 and 2: Out of scope Attachment 3: Not released Attachments 4 and 5: Out of scope	Release in part	22(1)(a)(ii) 34(3) 47C 47E(d)
	9/05/2017	3	Attachment 6: Minister's Media Release		
	18/7/2017	3	Attachment 7: Minutes of the NSCF Service Centre Sub Committee		
	7/9/2017	3	Attachment 8: Summary of staff and union consultations		
	7/6/2017	8	Attachment 9: Approvals required for the RFT		
	24/7/2017	34	Attachment 10: Evaluation and Probity Plan		
	21/7/2017	2	Attachment 11: Email approval for amendments to the Evaluation and Probity Plan		
	6/6/2017	7	Attachment 12: Procurement Plan Approval		
	28/7/2017	2	Attachment 13: Email advice of HRHV procurement status		
	21/8/2017	6	Attachment 14: Steering Committee Terms of Reference		
	July 2017	1	Attachment 15: Out of scope Attachment 16: Future key dates and milestones		
7.	9/05/2017	3	Cable to overseas posts – Visa Reform – 2017 Budget announcement	Release in part	22(1)(a)(ii)
	24/05/2017	3	Cable to overseas posts – Outsourcing of Client Enquiry Services		
8.	August 2017	1	Outsourcing of Services – Sydney Service Centre 2017-2018 – expected timeline	Release in part	22(1)(a)(ii)

No	Date of document	No. of pages	Description	Decision on release	
9.	May 2017	5	Budget Estimates – May 2017 – Back Pocket Brief – Approach to Market for Client Enquiry Services	Release in part	22(1)(a)(ii) 47E
	October 2017	5	Supplementary Estimates – October 2017 – Back Pocket Brief – Outsourcing of Service Centres		
	3/10/2017	1	Attachment A: CPSU Letter to the Minister – Outsourcing of Immigration Call Centres		
	6/10/2017	2	Attachment B: CPSU Letter to the Minister – Outsourcing of Service Centres		
	–	3	Attachment C: DIBP response to CPSU		
10.	June 2017	2	Email to staff – regarding Client Enquiry Services RFT Update	Release in part	22(1)(a)(ii) 47E(d)
		2	Email to staff – regarding Client Enquiry Services RFT Update		
		2	Email to staff – Probity notice RFT		
		2	Email to CPSU and NSCF Service Centre Sub Committee – RFT released		
11.	18/07/2017	3	Meeting Outcomes and actions arising from National Staff Consultative Forum Service Centre Sub Committee	Release in part	22(1)(a)(ii)
	09/11/2017	3	Meeting Outcomes and actions arising from National Staff Consultative Forum Service Centre Sub Committee		
	November 2017	1	NSCF November 2017 - Service Centre Sub Committee Update		
12.	13/09/2017	12	Client Enquiry Services Implementation Project – Staff FAQs – Sydney Service Centre	Release in part	22(1)(a)(ii) 47E(d)
13.	13/11/2017	-	Draft Cabinet Submission	Exempt in full	34(1)(d)

No	Date of document	No. of pages	Description	Decision on release	
14.	9/06/2017	55	Request for Tender (RFT) for the provision of Client Enquiry Services – DIBP RFT 11/16	Release in part	22(1)(a)(ii) 47C
	9/06/2017	31	Attachment A: Glossary		
	9/06/2017	33	Attachment B: Statement of Requirement		
	9/06/2017	2	Attachment C: Service Levels		
	9/06/2017	256	Attachment D: Draft Agreement		
	9/06/2017	4	Attachment E: Industry Briefing Registration Form and Confidentiality Deed Poll		
	9/06/2017	78	Attachment F: Tender Response Forms		
15.	20/06/2017	35	Client Enquiry Services Request for Tender (RFT) – Industry Briefing	Release in part	22(1)(a)(ii) 47C
	20/06/2017	21	Client Enquiry Services RFT – Industry Briefing Day – Talking Points		