



7 May 2019

In reply please quote:

FOI Request: FA 18/10/00175
File Number: ADF2018/204021

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 1 October 2018, the Department of Home Affairs (the Department) 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 for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

- 1) *Tender documents relating to contract CN3382961*
- 2) *Documentation for the five subsequent amendments to CN3382961*
- 3) *Correspondence between the Department and C5 Management Solutions (or any other name which the business with ABN 98 160 158 681 may be trading under) between 2015 and 2018*
- 4) *Reports, reviews, assessments or other material referencing C5 Management Solutions created between 2015 and 2018.*

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.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)

4 Documents in scope of request

The Department has identified 24 documents as falling within the scope of your request. These documents were in the possession of the Department on 1 October 2018 when your request was received.

In relation to part 1 of your request for tender documents relating to contract CN3382961, I am satisfied that all reasonable steps have been taken to locate any relevant documents and that no such documents exists as this contract was procured under a limited tender.

In relation to part 4 of your request, where you have sought access to “*reports, reviews, assessments or other material referencing C5 Management Solutions created between 2015 and 2018*”, I have limited my search to documents which have the characteristics of reports, reviews and assessments which reference C5 Management Solutions.

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 24 documents in part with deletions

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.

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 3 October 2018, 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 this instance, this includes signatures of Departmental staff and third party individuals.

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 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.

I consider that the release of the information marked 's33(a)(iii)' in the document(s) would adversely impact on the ability of the Department to maintain good working relations with the PNG Government and as a result, would, or could reasonably be expected to cause damage to the Australian Government's international relations.

The information detailed in the documents relates the delivery of international security escort training to the Papua New Guinea (PNG) Government to support of the removal of non-citizens from Manus Island. I consider that the information relates to a foreign government and provides insight into diplomatic and operational relationships in the context of removal of non-citizens, regional processing and resettlement arrangements.

.As such 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 42 of the FOI Act – Legal Professional Privilege

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that parts of document number 10 comprises of confidential communications passing between the Department of Home Affairs and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of these documents are not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The documents do not fall within the definition of operational information and remain subject to legal professional privilege.

I have therefore decided that part of document number 10 is exempt from disclosure under section 42 of the FOI Act.

6.4 Section 47 of the FOI Act – Documents disclosing 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 have 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 consider that document marked s47(1)(b) 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.

The documents contain information relating to a third party that was engaged by the Department to provide security escort training to the PNG Government. I have formally consulted the affected third party under section 27 of the FOI act. The affected third party has provided submissions that the documents contain commercially sensitive and valuable information relating to security training that is unique to the organisation and is not in the public domain. The information contained within the documents is valuable for the purpose of carrying on the commercial activities in which the 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 would be of value to a competitor as it could enable the competitor to obtain a commercial advantage over the entity.

I have therefore decided that documents marked 's47(1)(b)' is 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 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.

Some information marked 's47E(d)' consists of operational email addresses and telephone numbers used by this Department. These email addresses and phone numbers 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.

6.6 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 (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

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 s.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.*

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this information is only known to a limited group of people, the individual concerned is not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to documents relating to contracts between the Department and C5 Management Solutions Pty Ltd rather than information which wholly relates to other individuals.

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.

6.7 Section 47G of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I have considered that parts of documents marked 's47G(1)(a)' contains information concerning the business, commercial or financial affairs of an organization.

The information is in the nature of security escort training services provided by C5 Management Solutions Pty Ltd; the services to be provided and logistics for delivery of the training services; training feedback from participants and contact/address details that is not in the public domain.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) The extent to which the information is well known;
- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Department considers relevant.

The information contained within these documents is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources, such as the organisation's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

I have decided that the parts of the documents referred to above are conditionally exempt under section 47G 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.

6.8 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:

- (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 documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does not seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights 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.

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

- Disclosure of the operational email addresses which are conditionally exempt under **section 47E(d)** of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas to conduct their business as usual. Commonwealth agencies have established avenues in place for members of the public to contact when they have queries, complaints or comments. I consider that there is a strong public interest in ensuring public feedback is filtered through these available channels so that operational areas within the Department and other Commonwealth agencies are able to carry out their functions in an effective manner. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.
- 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 non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.
- Disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations. I consider that this would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have 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 have 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

ATTACHMENT A

SCHEDULE OF DOCUMENTS
REQUEST UNDER FREEDOM OF INFORMATION ACT 1982

FOI request: FA 18/10/00175

File Number: ADF2018/204021

Doc. No.	Date of document	No. of pages	Description	Decision on release	
1.	19.10.2018	3	Email from C5 Management - Error in the Deed of Variation No. 5 – Training Contract	Release in part	22(1)(a)(ii) 33(a)(iii) 42(1) 47G(1)(a)
2.	28.09.2018	4	Deed of Variation No. 6	Release in part	22(1)(a)(ii)
3.	03.10.2018	3	Email from C5 Management - Error in the Deed of Variation No. 5 and Training Contract	Release in part	22(1)(a)(ii) 42(1)
4.	30.09.2018	2	Email from C5 Management - Error in the Deed of Variation No. 5 and Training Contract	Release in part	22(1)(a)(ii) 42(1)
5.	28.09.2018	2	Email from C5 Management - Error in the Deed of Variation No. 5 and Training Contract	Release in part	22(1)(a)(ii) 42(1)
	-	31	Training Feedback	Release in part	22(1)(a)(ii) 47G(1)(a)
6.	31.08.2018	2	Email from C5 Management - Invoices 68 and 69 and Training Report	Release in part	22(1)(a)(ii)
	August 2018	17	C5 – Crisis Management – Training Report	Release in part	33(a)(iii) 47F(1) 47G(1)(a)
7.	27.06.2018	1	Support Group Coversheet – Approval for further International Security Escort training (variation no.5)	Release in part	22(1)(a)(ii) 33(a)(iii)
	26.06.2018	3	Departmental minute	Release in part	22(1)(a)(ii) 33(a)(iii)
8.	June 2018	6	Deed of Variation No. 5	Release in part	22(1)(a)(ii) 47(1)(b) 47G(1)(a)

9.	-	8	Contract Information Form (CIF) – Variation No. 5	Release in part	22(1)(a)(ii) 47E(d)
10.	-	8	Contract Information Form – contract variation – provision of further international escort training services	Release in part	22(1)(a)(ii) 47E(d)
11.	08.12.2017	1	Support Group Coversheet	Release in part	22(1)(a)(ii) 42(1) 47G(1)(a)
	-	6	Minute seeking approval for Variation No.4 of the contract “For the Provision of International Security Escort Training for PNG”	Release in part	22(1)(a)(ii) 33(a)(iii)
12.	08.12.2017	1	Support Group Coversheet – Deed of Variation 4	Release in part	22(1)(a)(ii)
		5	Deed of Variation No.4	Release in part	33(a)(ii) 22(1)(a)(ii) 47(1)(b)
13.	21.08.2017	6	Signed Deed of Variation No.3	Release in part	22(1)(a)(ii) 47(1)(b) 47G(1)(a)
14.	27.02.2017	4	Signed Deed of Variation No. 2 (signed 27.02.2017)	Release in part	22(1)(a)(ii) 47(1)(b) 47G(1)(a)
15.	24.09.2016	6	Deed of Variation No. 1	Release in part	22(1)(a)(ii) 47G(1)(a)
16.	15.09.2016	3	Departmental Minute	Release in part	22(1)(a)(ii) 33(a)(iii)
	15.09.2016	5	Attachment A -Executive Summary	Release in part	22(1)(a)(ii) 33(a)(iii) 47(1)(b) 47G(1)(a)

17.	19.09.2016	72	Contract for the provision of International Security Escort Training for PNG	Release in part	22(1)(a)(ii) 47G(1)(a) 47(1)(b)
18.	14.10.2016	2	Letter to C5 Management Solutions – Request for contract extension	Release in part	22(1)(a)(ii)
19.	23.03.2016	1	Letter to C5 Management Solutions – Notice of extension	Release in part	22(1)(a)(ii)
20.	15.09.2016	5	Email to C5 Management Solutions - Contract and Insurance Certificates	Release in part	22(1)(a)(ii) 42(1) 47G(1)(a)
21.	14.10.2016	3	Letter to C5 Management Solutions – Request for contract amendment	Release in part	22(1)(a)(ii)
22.	19.09.2016	3	Home Affairs email chain - Contract draft	Release in part	22(1)(a)(ii) 42(1)
23.	19.09.2016	6	Home Affairs email chain – Contract draft	Release in part	22(1)(a)(ii) 42(1)
24.	28.03.2016	8	Email from C5 Management Solutions – Request to extend contract	Release in part	22(1)(a)(ii) 33(a)(iii) 47E(d) 47G(1)(a) 47(1)(b)