



4 June 2019

In reply please quote:

FOI Request: FA 19/02/01270

File Number: ADF2019/9070

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 19 February 2019, 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 requested access to the following documents:

- 1) *a summary document outlining the contract between Maddocks and the Department of Home Affairs for Maddocks to act as the probity adviser in the procurement of Paladin to provide services to refugees on Manus Island*
- 2) *a summary document of the final report produced by Maddocks in regards to Paladin*
- 3) *a summary document of the final report produced by the Australian Government Solicitor in regards to Paladin and the contract and*
- 4) *a summary document detailing the contracts and the amount of work Maddocks has done for the department and its antecedents since 2017.*

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 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)
- consultation responses from third parties consulted in accordance with the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents 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. A total of four documents have been identified as falling within the scope of your request:

Part 1: two documents, being the Standing Offer for the Provision of Legal Advice and Dispute Resolution and Litigation Services and a subsequent Work Order

Part 2: Legal Advice from the Department's legal advisers

Part 4: one document produced in accordance with section 17 of the FOI Act.

Having regard to your request and the types of documents that may fall within the scope of your request, I am satisfied that the searches conducted were thorough and all reasonable steps were taken to locate any document relevant to your request.

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

5 Decision

Section 24A of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find the document and the Department is satisfied that the document does not exist. I am satisfied that the Department undertook reasonable searches in relation to part 3 of your request and that no documents relevant to that part of your request were in the possession of the Department on 19 February 2019 when your FOI request was received. As such I am refusing part 3 of your request under section 24A of the FOI Act.

The decision in relation to the four documents in the possession of the Department which fall within the scope of parts 1, 2 and 4 of your request is as follows:

- Release three documents in part with redactions
- Exempt one document in full from disclosure.

6 Reasons for Decision

Detailed reasons for my decision are set out below. Attachment A should be read in conjunction with 6.1, 6.2 and 6.3 below.

Where the schedule of documents indicates an exemption 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 redactions, 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 of our policy 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. This policy extends to staff of the Department's Contracted Service Providers.

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 therefore prepared an edited copy of the documents, with the irrelevant material redacted pursuant to section 22(1)(a)(ii) of the FOI Act.

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

6.2 Section 42 of the FOI Act – Legal Professional Privilege

Section 42 of the FOI Act provides 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 the document relevant to part 2 of your request comprises confidential communications passing between the Department and its legal advisers, for the dominant purpose of giving or receiving legal advice.

In determining that the communication is privileged, I have considered 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 decided that document 2 is exempt from disclosure under section 42 of the FOI Act.

6.3 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 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 documents 1.1, 1.2 and 3 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.

In making my decision, I had regard to exemption contentions received from an affected third party, who was consulted under section 27 of the FOI Act in relation to the proposed release of these documents.

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 could enable a competitor to obtain a commercial advantage over the entity.

I have therefore decided that parts of documents 1.1, 1.2 and 3 are exempt from disclosure under section 47 of 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 19/02/01270

No.	Date of document	No. of pages	Description	Decision on release	
1.1	26/10/2017	5	Revised Work Order	Release in part	s22(1)(a)(ii) s47
1.2	01/10/2016	52	Standing Offer for the Provision of Legal Advice and Dispute Resolution and Litigation Services	Release in part	s22(1)(a)(ii) s47
2	22/12/2017	3	Letter from Maddocks	Exempt in full	s42 s47
3	Undated	1	Payments made to Maddocks	Release in part	s22(1)(a)(ii) s47