



30 October 2019

[REDACTED]

In reply please quote:

FOI Request: FA 19/07/00490
File Number: OBJ2019/41307

[REDACTED]

Freedom of Information (FOI) request - Access Decision

On 9 July 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 have requested access to the following documents:

The contract for CN3545113, and all correspondence between the Department and Paradigm One that relates to it.

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 six documents within the scope of the documents. The documents existed in the possession of the Department on 9 July 2019 when your FOI request was received.

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 six documents 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 10 July 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 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 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety

Section 37(2)(b) of the FOI Act provides that a document is exempt from disclosure if its disclosure would, or could reasonably be expected to disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would or could reasonably likely to, prejudice the effectiveness of those methods or procedures.

I consider that parts of certain document would, or could reasonably be expected to disclose lawful methods or procedures for preventing or detecting breaches or evasions of the law and that disclosure would, or would reasonably likely to, prejudice the effectiveness of those methods or procedures.

It is noted that the Department's role includes managing the security and integrity of Australia's borders. The Department leads the management of risks to Australia's border in close collaboration with other government agencies, including State and Federal law enforcement agencies. As such, the Department's role includes law enforcement functions.

The disclosure of information within these documents would be reasonably likely to impact on ongoing investigative methodology and relationships both domestically and internationally that support Australian government investigative capabilities. The release of this information would prejudice the effectiveness of those methods or procedures, assisting endeavours to evade them and thereby reducing the ability of the Department and other law enforcement agencies to protect the borders of Australia.

I have decided that this information is exempt from disclosure under Section 37(2)(b) of the FOI Act.

6.3 Section 47 of the FOI Act – Trade Secrets

Section 47 provides that a document is an exempt document if its disclosure would disclose trade secrets.

I have decided that the release of parts of documents would disclose trade secrets.

I have taken the following factors into consideration when deciding that the information contains trade secrets:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information
- the value of the information to the owner and to his or her competitors
- the effort and money spent by the owner in developing the information
- the ease of difficulty with which others might acquire or duplicate the secret.

I have therefore decided that the parts of documents that contain the trade secrets are exempt from disclosure.

6.4 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 relating to the deliberative processes involved in the functions of the Department.

'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' generally involves *"the process of weighing up or evaluating competing arguments or considerations"*¹ and the *'thinking processes –the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'*²

The document contains advice, opinions and recommendations prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of Department, being deliberative processes involved in contract negotiations between the

¹ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

² *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67

Department and Paradigm One. I am satisfied that this deliberative matter relates to a process that was undertaken within government to consider whether and how to make or implement a decision, revise or prepare a policy, administer or review a program, or some similar activity.³

Section 47C(2) provides that “deliberative matter” does not include purely factual material. I have had regard to the fact that “purely factual material” does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.⁴ A factual summary prepared to aid a complex issue may be classed as purely factual material, but may also be of a character as to disclose a process of section involving opinion, advice or recommendation. As such, a conclusion which involves a deliberative process may well prevent material from being purely factual⁵.

I am further satisfied that the factors set out in subsection (3) do not apply in this instance.

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

6.5 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 (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 a third party. 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 a third party 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

³ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962

⁴ *Dreyfus and Secretary Attorney-General's Department (Freedom of information)* [2015] AATA 962 [18]

⁵ *Harris v Australian Broadcasting Corporation and Others* (1984) 1 FCR 150

a limited group of people, the individual(s) concerned is/are 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 a third party would be relevant to the broader scope of your request, as you are seeking access to information related to the contract 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 an individual.

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 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 part of some documents contains information concerning the business, commercial or financial affairs of an organization.

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.

6.7 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 conditionally exempt information under **section 47C** could reasonably be expected to prejudice the ability of the Department to manage future deliberations in relation to commercial contract negotiations. 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 that individual's 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 19/07/00490

File Number: OBJ2019/41307

No	Date of document	No. of pages	Description	Decision on release	
1.	Undated	28	Paradigm One Contract - CN3545113	Release in part	37(2)(b) 47 22(1)(a)(ii) 47F(1)
2.	21/11/2018	2	Departmental email with attachments Subject: Contract Variation Letter – Agreed Support and maintenance Fee Terms	Release in part	22(1)(a)(ii) 47F(1) 47 47G
3.	19/06/2018	3	Departmental email and attachment Subject: SEDNode fees Attachment: SEDNode Fee Schedule 2018-19	Release in part	22(1)(a)(ii) 47F(1) 47C
4.	13/07/2018	16	Departmental email and attachment Subject: SEDNode fees Attachment: SEDNode Fee Schedule 2018-19	release in part	22(1)(a)(ii) 47F(1) 47C 37(2)(b)
5.	5/06/ 2019	3	Departmental email Subject: SEDNode fees	Release in part	22(1)(a)(ii) 47F(1) 37(2)(b) 42(1)
6.	29/10/2018	2	Departmental email SEDNode Support Maintenance Fee	Release in part	22(1)(a)(ii) 47F(1) 47C(1) 47G

