



SF
Right to Know

Via email: foi+request-10695-ea116e8e@righttoknow.org.au

Dear SF

Decision on your Freedom of Information request

I refer to your request received by the Department of Agriculture, Fisheries and Forestry (**department**) on 18 September 2023 for access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) to the following documents:

'A contract was awarded to 1 AND ONE PTY LTD to "Support for the Live Sheep Phase Out Panel".

I request under the FOI act the scope of work and deliverables (including any amendments, adjustments or informal requests) related to that contract.'

My decision

The department holds 2 documents (totalling 8 pages) that relate to your request.

I have decided to:

- grant you **part access** to 2 documents (documents 1 and 2) with some of the content removed.

I have decided that parts of documents that you have requested are exempt under the FOI Act as they contain:

- commercially sensitive information, the disclosure of which would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed (section 47(1)(b));
- business information, the disclosure of which would, or could reasonably be expected to, unreasonably affect a person adversely and be contrary to the public interest (section 47G(1)(a)); and
- personal information about other people, the disclosure of which would be contrary to the public interest (section 47F(1)).

Please see the schedule at **Attachment A** to this letter for a detailed list of the documents and the reasons for my decision.

Charges

On 4 October 2023, the department made a preliminary estimate of the charges applicable to your request in the amount of \$45.84. On 5 October 2023, the department received a deposit of \$20.00.

I have assessed the charge under Regulation 10 of the *Freedom of Information (Charges) Regulations 2019*. As some material that was initially determined to be in scope of your request was ultimately decided to be out of scope, the cost of processing your request is \$23.25, which is less than the amount estimated. Accordingly, I have fixed the charge under this provision and no further payment is required.

How we will send your documents to you

I note that a third party who was consulted in respect of the request has objected to the release of the documents.

The third party can seek internal review with the department or review with the Office of the Australian Information Commissioner (OAIC) within 30 days after the date of this decision.

As such, access to the documents is deferred until the third party has either exhausted their rights to have this decision reviewed (internally or externally) or allowed those rights to expire.

You can ask for a review of my decision

If you wish to seek an internal review, you must apply to the department within **30 days** after the day you are notified of this decision. An application for internal review must be made in writing by post to the FOI Officer or email to foi@aff.gov.au.

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within **60 days** after the day you are notified of this decision. You can also make a complaint to the Information Commissioner if you have concerns about how the department handled your request.

You can find information about requesting a review, making a complaint, and other information about FOI on the OAIC website www.oaic.gov.au or phone the OAIC on 1300 363 992.

Further assistance

If you have any questions, please email foi@aff.gov.au.

Yours sincerely



Andrew McDonald
Acting First Assistant Secretary
Traceability, Plant and Live Animal Exports Division

20 November 2023



LIST OF DOCUMENTS FOR RELEASE

LEX-30263

Doc No.	Pages	Date	Description	Decision	Exemption	Comments
1.	1-6	8/08/2023	Order for Service	Release in part	s 47(1)(b) s 47F(1) s 47G(1)(a)	Page 3: commercially valuable information exempt under s 47(1)(b). Page 3: business information exempt under s 47G(1)(a). Pages 1-3 and 5: personal information exempt under s 47F(1). Pages 1-3: staff details deleted under s 22(1)(a)(ii) (out of scope). Page 6: blank page.
2.	7-8	31/08/2023	Order Variation	Release in part	s 47(1)(b) s 47F(1) s 47G(1)(a)	Pages 7-8: commercially valuable information exempt under s 47(1)(b). Page 7-8: business information exempt under s 47G(1)(a). Pages 7-8: personal information exempt under s 47F(1). Page 7: staff details deleted under s 22(1)(a)(ii) (out of scope).

REASONS FOR DECISION

What you requested

'A contract was awarded to 1 AND ONE PTY LTD to "Support for the Live Sheep Phase Out Panel".

I request under the FOI act the scope of work and deliverables (including any amendments, adjustments or informal requests) related to that contract.'

On 19 September 2023, the department acknowledged your request and advised you that we would not include personal details about our staff. You did not contact the department again about this. Staff details have therefore been deleted in accordance with section 22(1) of the FOI Act.

On 26 September 2023, you sought to expand your request to encompass an additional contract awarded to 1 and One Pty Ltd. The department advised that only documents within the scope of your original request can be provided up to the date you made the request, and for any documents after the date of your original request, a new FOI request will need to be made. On the same day, you agreed to leave the original request as it was and create a new request for the additional contract.

What I took into account

In reaching my decision, I took into account:

- your request dated 18 September 2023;
- other correspondence with you on 26 September 2023;
- the documents that fall within the scope of your request;
- consultation with third parties about documents which contain information concerning them;
- information about:
 - the nature of the documents; and
 - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**); and
- the FOI Act.

Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided that certain parts of documents that you requested are exempt under the FOI Act. My findings of fact and reasons for deciding that an exemption applies to those documents are discussed below.

Section 47(1)(b) of the FOI Act – documents disclosing commercially valuable information

I have applied the exemption in section 47(1)(b) to parts of documents 1 and 2.

Section 47(1) of the FOI Act relevantly provides:

'A document is an exempt document if disclosure of the document under this Act would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be, destroyed or diminished if the information were disclosed.'

Paragraph 5.204 of the Guidelines provides that, in order for a document to be exempt under section 47(1)(b) of the FOI Act, it must satisfy two criteria:

- The document must contain information that has a commercial value either to an agency or to another person or body; and
- The commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

Furthermore, paragraph 5.205 of the Guidelines relevantly provides that in deciding whether information has commercial value, a decision maker may consider whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value.

The documents contain information in relation to the contractual arrangement between the department and a consulting company, including daily rates charged by the company. Given the total value of the contract is publicly available, details such as the number of days relating to a contract will demonstrate information such as the total amount earned by each individual associated with the contract and rates charged by the company for its services. The information has not been made public to date and the department has not publicised material of this nature. Accordingly, if the information were made available through the FOI process, it would inform the public about the financial status of the third party and therefore diminish the commercial value of the information as the third party will lose its competitiveness in a tender process and be unable to successfully obtain contracts.

As such, I am satisfied that certain parts of the documents are exempt under section 47(1)(b) of the FOI Act.

Section 47G of the FOI Act – Business information

I have applied the conditional exemption in section 47G(1)(a) to documents 1 and 2.

Section 47G of the FOI Act provides:

'(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The documents are a contract between the department and a consulting company and a variation of that contract. The documents contain information relating to the pricing of the company's services, including daily rates of individuals associated with the contract and the number of days which may be used to deduce further information such as daily rates. On this basis, I am satisfied that the documents contain information concerning a person's business, commercial or financial affairs. Following consultations with the relevant person, I am further satisfied that the disclosure of the material would, or could reasonably be expected to unreasonably affect the organisation adversely by detailing the rates charged by the company for its services which is not available in the public domain and could diminish the company's competitiveness. As such, I am satisfied that the relevant documents are conditionally exempt under section 47G(1)(a) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

'The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.'

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance, being the live sheep export phase out by sea project; and
- promote effective oversight of public expenditure in relation to the live sheep export phase out by sea project.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to adversely affect a person's lawful business.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the documents would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

As identified in the Schedule, I have deleted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.

Section 47F of the FOI Act - unreasonable disclosure of personal information

I have applied the conditional exemption in section 47F(1) to documents 1 and 2.

Section 47F of the FOI Act relevantly provides:

'(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
- (a) the extent to which the information is well known;
 - (b) 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;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.'

Personal Information

The term 'personal information' is defined as follows:

'...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.'

Paragraph 6.130 of the Guidelines provides:

'Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.'

I find that parts of documents 1 and 2 contain personal information of other people. This includes their names, email addresses, contact details and signatures.

Whether disclosure is 'unreasonable'

In addition to the factors specified in section 47F(2) of the FOI Act, paragraph 6.138 of the Guidelines provides:

'The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.'

I am satisfied that the disclosure of the third party personal information would be unreasonable for the following reasons:

- it relates to aspects of individuals' personal affairs;
- you do not have the consent from these individuals for the release of their personal information;
- the information is private and not available in full or in part from publicly-accessible sources; and
- the identity of the individuals concerned is readily apparent or could be easily ascertained.

On this basis, I have decided that the personal information included in documents referred to in the Schedule is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

Section 11A(5) of the FOI Act provides:

‘The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.’

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance, being the live sheep export phase out by sea project.

I have also considered the relevant factors weighing against disclosure, indicating that access would be contrary to the public interest. In particular, I have considered the extent to which disclosure could reasonably be expected to prejudice an individual's right to privacy.

Based on the above factors, I have decided that in this instance, the disclosure of parts of the documents would, on balance, be contrary to the public interest.

I have not taken into account any of the irrelevant factors set out in section 11B(4) of the FOI Act in making this decision.

As identified in the Schedule, I have deleted the exempt information in the documents and released the remaining material in accordance with section 22(1) of the FOI Act.

Summary of my decision

In conclusion, I have decided to:

- grant you part access to 2 documents.

I have decided that:

- documents 1 and 2 are exempt in part, under section 47(1)(b) of the FOI Act; and
- documents 1 and 2 are conditionally exempt in part, under sections 47G(1)(a) and 47F(1) of the FOI Act, and disclosure would be contrary to the public interest for the purposes of section 11A(5).