



12 February 2016

In reply please quote:

FOI Request FA 15/10/00321
File Number ADF2015/51692

CD

Sent via email only: foi+request-1280-2109a622@righttoknow.org.au

Dear CD

Freedom of Information request – decision on request

This notice of decision refers to your request received by the Department of Immigration and Border Protection (the Department) on 3 October 2015 seeking access under the *Freedom of Information Act 1982* (the Act) to the following documents:

any correspondence held by the Department, including correspondence created by the Department's contractors, regarding the "divestment" and "boycott" of companies contracted by the Department to supply services.

Following consultation with you, on 7 October 2015 you amended the scope of the request to:

Correspondence held by the Department, including correspondence created by Transfield Services, regarding the "divestment" and "boycott" of Transfield Services and/or their subcontractors that supply services to the Department.

I wish to nominate a timeframe of the previous 12 months to original date of this FOI request. So the timeframe I nominate is 3/10/14 - 3/10/15.

Decision

My decision is to release, in part, the documents within the scope of your request. Please see the attached Decision Record and Schedule of Documents. Read together these form my reasons for decision as required under s.26 of the FOI Act.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of my 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 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:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@border.gov.au

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au

How to make a complaint about the handling of this FOI request

You may complain to either the Commonwealth Ombudsman or the Australian Information Commissioner about action taken by the Department of Immigration and Border Protection in relation to your request.

The Ombudsman will consult with the Australian Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Ombudsman can be directed to:

Phone 1300 362 072 (local call charge)
Email ombudsman@ombudsman.gov.au

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 Ombudsman or 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 Immigration and Border Protection as the relevant agency.

* **Please note:** On 13 May 2014, the Australian Government announced a decision to disband the Office of the Australian Information Commissioner (OAIC). However, the Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the Office of the Australian Information Commissioner (OAIC), has not yet been

considered by the Senate. The OAIC therefore remains operational until further notice. Information on the OAIC public website advises that Information Commissioner reviews will continue to be handled by the OAIC and FOI complaints will be referred to the Commonwealth Ombudsman. Please contact the OAIC on the details above if you require further information.

Contacting the Department

If you wish to discuss this matter, I can be contacted using the email address provided below.

Yours sincerely



Ian Campbell
Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachments

- ✓ Attachment A - Decision Record
- ✓ Attachment B - Schedule of Documents
- ✓ Attachment C – Extract of relevant legislation
- ✓ Attachment D - Documents released



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/10/00321
File Number ADF2015/51692

Scope of request

Correspondence held by the Department, including correspondence created by Transfield Services, regarding the "divestment" and "boycott" of Transfield Services and/or their subcontractors that supply services to the Department.

I wish to nominate a timeframe of the previous 12 months to original date of this FOI request. So the timeframe I nominate is 3/10/14 - 3/10/15.

Documents in scope

1. The Department identified one document as being within scope of the request.

Authority to make decision

2. 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 Departmental records.

Information considered

3. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Departmental files and/or documents (identified above); and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

4. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.
5. This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).
6. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act

7. The Schedule of Documents (Attachment B) and the document released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

Section 47F – personal privacy

8. Section 47F(1) of the Act provides:

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).

The relevant documents contain 'personal information'

9. I am satisfied that the document to which you have sought access contains 'personal information', being the names of two employees at Transfield Services.

Disclosure would involve the 'unreasonable disclosure of personal information'

10. In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which the Department *must* consider.

11. These factors are:

- 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; and
- d) any other matters that the agency or Minister considers relevant.

12. The personal information in the document is not well known. This has been confirmed by Transfield Services. As such, I consider that disclosure of the personal information in the document would be unreasonable.

Application of the 'public interest' test

13. While I have found that the conditional exemption in section 47F(1) of the FOI Act applies to the information outlined in paragraph 9 above, section 11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.

14. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:

- a) whether release would promote the objects of the FOI Act;
- b) whether release would inform debate on a matter of public importance;
- c) whether release would promote effective oversight of public expenditure; and
- d) whether release would allow a person to access his or her own personal information.

15. While I acknowledge that release of the document will promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying information would make a negligible further contribution to public debate.

16. In contrast, I consider that the protection of the individual's right to privacy should be given the upmost importance. In relation to this FOI request, Transfield Services advised the Department that it has concerns that releasing the names of its employees included in the document may place those persons in danger of abuse or attack, on the basis of their involvement in a project that attracts a high level of media attention and has been the subject of public protests.
17. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under section 47F of the FOI Act.

Non-existence of a response to the question raised by the Department

18. The information released in the document includes a question (no. 3) querying the impact on Transfield Services of the sale of Transfield Services shares by a number of companies.
19. The relevant Departmental business area and Transfield Services have confirmed that there was no response to the question.

Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act

20. I find that the document relevant to your request contains some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the document released.
21. The material deleted under section 22(1)(a)(ii) comprises:
- the name and direct contact details of non-Senior Executive Service staff; and
 - correspondence between Transfield Services and the Department which is irrelevant to the scope of the request.



Ian Campbell
Authorised decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

12 February 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD
FOI Request FA 15/10/00321

No.	Date of document	Pages	Description	Decision on release	Exemption
1.	09/09/2015	1-2	Email correspondence	Released in part	s.47F(1)

Attachment C – Extract of relevant legislation (FOI Act)

11A Access to documents on request

Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) 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.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
- (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

47F Public interest conditional exemptions—personal privacy

General rule

- (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.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following
 - (a) a medical practitioner
 - (b) a psychiatrist;
 - (c) a psychologist;
 - (d) a counsellor;
 - (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).