



12 July 2017

Reference numbers

FOI Request FA 17/01/00475

File Number ADF2017/5083

Mr Jackson Gothe-Snape

Sent via email: foi+request-2906-70a2ac46@righttoknow.org.au

Dear Mr Gothe-Snape

Freedom of Information request – decision on request

This letter refers to your request received on 4 January 2017 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

...all Labour Agreements agreed to by the Commonwealth under the Migration Act.

On 9 February 2017, following provision of a notice under section 24AB of the FOI Act (Practical Refusal Reason), you agreed to revise the scope of your request to the following:

a table of entities which have signed a labour agreement with the government, the kind of labour agreement, the date it was signed and the number of nominations approved for each agreement - to include only those labour agreements captured in the labour agreement database which was created in 2011.

Decision

The Department has now finalised the decision for this request. The decision and the reasons for the decision are set out in the attached Decision Record at **Attachment A**.

Review rights

Internal review

If you disagree with the Department's decision, you have the right to apply for an internal review by the Department of the 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.reviews@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 the 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 the Australian Information Commissioner if you have concerns about how the Department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au

Contacting the FOI Section

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

Yours sincerely

(signed electronically)

Ian Campbell
Freedom of Information Section
Department of Immigration and Border Protection

Telephone (02) 6264 3030
Email foi@border.gov.au

Attachments

- Attachment A - Decision Record
- Attachment B - Schedule of Documents
- Attachment C – Document released under the FOI Act



Attachment A

DECISION RECORD

Request Details

FOI Request FA 17/01/00475
File Number ADF2017/5083

Scope of request

1. On 4 January 2017 you requested:

all Labour Agreements agreed to by the Commonwealth under the Migration Act.

2. On 9 February 2017, following the Department's provision of a notice under section 24AB of the FOI Act (practical refusal reason), you agreed to revise the scope of your request to the following:

a table of entities which have signed a labour agreement with the government, the kind of labour agreement, the date it was signed and the number of nominations approved for each agreement - to include only those labour agreements captured in the labour agreement database which was created in 2011.

Authority to make decision

3. I am an officer authorised under s.23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate Departmental records.

Information considered

4. In reaching my decision, I have considered the following:
 - the *Freedom of Information Act 1982*;
 - the Australian Information Commissioner's guidelines relating to access to documents held by government;
 - departmental documents, identified in the Schedule of Documents; and
 - consultations with the relevant business areas.

Decision

5. I have decided to release the documents within scope of the request with exemptions applied to parts of the documents.

Reasons for decision

6. 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.

7. 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 reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. 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.

Exemptions applied to the documents

9. The Schedule of Documents (Attachment B) and the Documents Released (Attachment C) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

Subsection 47G(1) Public interest conditional exemptions — business

10. Subsection 47G(1) of the FOI Act states:

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; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

11. I am satisfied that parts of Documents 1 and 2 contain sensitive commercial information.
12. The information consists of the maximum number of nominations approved under each labour agreement – that is, the maximum number of overseas workers that the relevant labour agreement sponsors were approved to bring into Australia.
13. This information is commercially sensitive as if disclosed, it would give competitors of those parties which had entered into labour agreements details of those parties' staffing operations, including how many staff the businesses would be seeking to sponsor to work in Australia.
14. I consider that the release of this information would likely adversely affect the commercial operations of the businesses which entered into the labour agreements. I therefore consider the relevant parts of the documents to be conditionally exempted from disclosure under subsection 47G(1)(a) of the FOI Act.

Application of the 'public interest' test

15. While I have found that the conditional exemption in s.47G(1)(a) of the FOI Act applies to the information outlined above, s.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.
16. In determining whether disclosure would be contrary to the public interest, s.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.
17. I acknowledge that release of the exempted material would promote the objects of facilitating and promoting public access to information.
18. I consider that release of the exempted material could marginally inform debate on a matter of some public interest.
19. I do not consider that release of the exempted material would promote effective oversight of public expenditure or allow a person to access his or her own personal information.
20. In contrast to the factors favouring release, I consider that the protection of sensitive commercial information is essential for ensuring the effective functioning of a competitive business environment as well as for preserving the Department's working relationship with the business community.
21. Taking into account the above matters, on balance, I consider that disclosure of the exempted material in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under subsection 47G(1)(a) of the FOI Act. The exemptions have therefore been applied to the documents released.



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

8 July 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 17/01/00475

File Number ADF2017/5083

| Doc No. | Pages | Description | Decision on release FOI Act Exemptions |
|---------|-------|---|---|
| 1. | 1-11 | Expired Labour Agreements (as at 14 March 2017) | s.47G(1)(a) Exempt in part |
| 2. | 1-17 | Labour Agreements In-Effect (as at 14 March 2017) | s.47G(1)(a) Exempt in part |