



30 March 2017

**In reply please quote:**

FOI Request FA 17/02/00939  
File Number ADF2017/23632

Mr James SMITH

Sent via email: [foi+request-3161-4509d5e6@righttoknow.org.au](mailto:foi+request-3161-4509d5e6@righttoknow.org.au)

**Freedom of Information request**

Dear Mr Smith,

This letter refers to an access request received under the *Freedom of Information Act 1982* (the Act) on 26 February 2017. You requested access to the following information:

*All documents wherein the outcome of any enterprise bargaining ballots were communicated to the department by the entity who undertook the ballots. This shall include the YES/NO vote amounts or percentages as well as any additional information related to the vote. For example, a breakdown of the vote by employee location, or APS level.*

*The scope of this request covers any such documents that were received as a result of EBA offers made to staff under:  
Workplace Bargaining Policy 2015 or Australian Government Public Sector Workplace Bargaining Policy 2014*

This letter is to provide you with the decision which is at Attachment A – Decision Record.

**FOI Legislation**

A copy of the FOI Act is available for your reference from:  
[www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal](http://www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal)

**Review rights**

Internal review

If you disagree with the decision, you have the right to apply for an internal review of the decision. If you wish to make a request for internal review this must be sent within 30 days of 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](mailto:foi.reviews@border.gov.au)

Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of the decision. You must apply in writing within 60 days of this notice. For further information about review rights under the FOI Act please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at [www.oaic.gov.au](http://www.oaic.gov.au)

**How to make a complaint about the handling of your 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](http://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)*

Helen Simons  
FOI Officer  
Freedom of Information, Privacy & Records Management Branch  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

**Attachment(s)**

- ✓ Attachment A – Decision Record
- ✓ Attachment B – Documents Released



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 17/02/00939  
File Number ADF2017/23632

#### Original scope of request

1. On 26 February 2017 you requested:

*All documents wherein the outcome of any enterprise bargaining ballots were communicated to the department by the entity who undertook the ballots. This shall include the YES/NO vote amounts or percentages as well as any additional information related to the vote. For example, a breakdown of the vote by employee location, or APS level.*

*The scope of this request covers any such documents that were received as a result of EBA offers made to staff under:  
Workplace Bargaining Policy 2015 or Australian Government Public Sector Workplace Bargaining Policy 2014*

#### Documents in scope

2. Seven documents, totalling seven pages, within scope of your request have been located by the relevant business area of the Department.

#### Authority to make decision

3. 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

4. In reaching my decision, I have considered the following:
  - The *Freedom of Information Act 1982*;
  - The documents as released at Attachment B;
  - Consultations with relevant business areas; and
  - The Australian Information Commissioner's guidelines relating to access to documents held by government.

## Decision

5. The documents are released to you in part. The exemptions applied are indicated in the documents released (Attachment B). Exemptions were applied on the following grounds:

## Exemptions

### Section 47F – personal privacy

6. 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).*

7. I am satisfied that documents to which you have sought access contain 'personal information', being the identities and other personal information of third parties (employees of the company contracted by the Department to conduct the ballot process).

*Disclosure would involve the 'unreasonable disclosure of personal information'*

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

9. I consider that the personal information in the document is not known to the applicant or available in the public domain. As such, I consider that disclosure of the personal information in the document would be unreasonable.

10. I therefore find that the material is conditionally exempt under s.47F(1) of the FOI Act.

*Application of the 'public interest' test*

11. While I have found that the conditional exemption in s.47F(1) 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.

12. 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.

13. I acknowledge that release of the documents would promote the objects of facilitating and promoting public access to information.

14. I consider that release of individual identifying and personal information would not inform debate on a matter of public importance, promote effective oversight of public expenditure or allow a person (the applicant) to access their own personal information.
15. In contrast, I consider that the protection of the individuals' right to privacy should be given the upmost importance.
16. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the documents is contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under s.47F of the FOI Act. The exemptions have therefore been applied to the documents released.

*(signed electronically)*

Helen Simons  
Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

30 March 2017