



Mr Jackson Gothe-Snape

By email: [foi+request-3228-d9e7f991@righttoknow.org.au](mailto:foi+request-3228-d9e7f991@righttoknow.org.au)

Dear Mr Gothe-Snape

1. I refer to your correspondence, dated 13 March 2017, to the Department of Employment (the Department), requesting access under the *Freedom of Information Act 1982* (Cth) (the FOI Act) to the following documents:

*...any correspondence with the Minister's office on reporting of the contract with identifier CN3174232*

### Background

2. On 31 March 2017, the Department requested that you clarify the scope of your request. By email the same day you indicated that you were seeking access to:  
  
*...documents in which the grant of the contract was reported to the Minister at the end of the tender process and any correspondence around the outcome of the grant.*
3. On 4 April 2017, the Department notified you of its decision to impose a charge (\$587.50) in relation to your request.
4. On 27 April 2017, you revised the scope of your request by removing all attachments from relevant documents. The Department treated this revised request as a contention that the charges should be reduced under paragraph 29(1)(c) of the FOI Act and, on 4 May 2017, the Department notified you that it had decided to reduce the amount of the charge in light of the revised scope.
5. On 15 May 2017 you requested waiver of the charges in relation to your request on public interest grounds, and contended that the charges had been wrongly assessed. On 13 June 2017, the Department notified you of its decision to waive the charges in relation to your request.

### Decision on access to documents

6. I am authorised to make decisions under the FOI Act and my decision regarding your request and the reasons for my decision are set out below. The Schedule of Documents at **Attachment A** (the Schedule) summarises my decision as it applies to the documents covered by your request.
7. I am advised that the Department has in its possession **4** documents (**13** pages) that fall within the scope of your request.
8. Having considered these documents, I have decided to grant access in part to all **4** documents. I have decided that certain pages contain material that is:

- conditionally exempt under subsection 47C(1) of the FOI Act because its disclosure would disclose matter (deliberative matter) relating to recommendations obtained for the purposes of the deliberative processes involved in the functions of an agency and, pursuant to subsection 11A(5) of the FOI Act, the material is not required to be disclosed because its disclosure at this time would be, on balance, contrary to the public interest;
- conditionally exempt under subsection 47F(1) of the FOI Act because its disclosure would involve the unreasonable disclosure of personal information about individuals and, pursuant to subsection 11A(5) of the FOI Act, the material is not required to be disclosed because disclosure at this time would, on balance, be contrary to the public interest; and
- conditionally exempt under subsection 47G(1) of the FOI Act because its disclosure would reveal information concerning the business, commercial or financial affairs of an organisation where the disclosure would, or could reasonably be expected to, unreasonably affect that organisation adversely in respect of its lawful business, commercial or financial affairs and, pursuant to subsection 11A(5) of the FOI Act, the material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

9. In reaching my decision, I took the following material into account:

- your correspondence, dated 13 March 2017, outlining the particulars of your request;
- documents falling within the scope of your request;
- the FOI Act;
- consultations with departmental officers about the nature of the documents;
- relevant case law;
- consultations undertaken under section 27 of the FOI Act with third parties about whether certain material should be exempt from release; and
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (OAIC Guidelines).

#### *Section 22 of the FOI Act*

10. I have decided that some material in the documents, as identified in the Schedule, is irrelevant to the scope of your request. In this regard, section 22 provides that where it is reasonably practicable to do so, an agency may prepare an edited copy of a document for release by deleting the irrelevant material from the document.
11. In accordance with section 22, I have decided to delete irrelevant material and release to you the balance of the material.

#### **Reasons for Decision**

##### *Section 47C of the FOI Act*

12. Subsection 47C(1) of the FOI Act relevantly provides that:

*A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained,*

*prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of...an agency.*

13. The OAIC Guidelines indicate that 'deliberative process' refers to the 'process of weighing up or evaluating competing arguments or considerations or to thinking processes'(paragraph 6.59, OAIC Guidelines), and may include 'the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions, including the pattern of facts or opinions considered, and interim decisions or deliberations' (paragraph 6.61, OAIC Guidelines). The OAIC Guidelines also indicate that, in order for this exemption to apply, the deliberative process must relate to the functions of an agency.
14. I have decided that three (3) documents, as identified in the Schedule, contain deliberative matter. The matter relates to recommendations obtained in the course of deliberative processes involved in the functions of an agency, namely the opinions and recommendations of the Department regarding the tender for employment services.
15. On this basis, I have decided that the material is conditionally exempt under subsection 47C(1) of the FOI Act.
16. Under subsection 11A(5) of the FOI Act, the Department must give you access to this material unless, on balance, it would be contrary to the public interest to do so.
17. In weighing up the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account the extent to which disclosure would:
  - promote the objects of the FOI Act by increasing scrutiny of government activities;
  - promote effective oversight of government expenditure; and
  - inform debate on a matter of public importance.
18. I have weighed against the relevant factors the extent to which disclosure:
  - could reasonably be expected to prejudice the Department's ability to develop risk mitigation strategies related to future tenders;
  - could reasonably be expected to inhibit frankness and candour in the context of internal deliberation on risk mitigation strategies; and
  - could reasonably be expected to prejudice the Department's relationships with its contracted service providers and by extension the viability of the Department's employment services programmes.
19. Based on the above, I have decided that in the circumstances the public interest in favour of disclosure is outweighed by the public interest against disclosure.
20. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) in making this decision.
21. In summary, I have decided that this information is conditionally exempt under subsection 47C(1) of the FOI Act, and I have further decided that it would be, on balance, contrary to the public interest to release this information.

*Section 47F of the FOI Act*

22. Subsection 47F(1) of the FOI 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).*

23. The term 'personal information' is defined in section 4 of the FOI Act as having the same meaning as in the *Privacy Act 1988* (Cth), that is:

*...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.*

24. The OAIC Guidelines relevantly provide that personal information can include a person's name, address and telephone number (paragraph 6.130 of the OAIC Guidelines).
25. I have decided that three (3) documents, as referred to in the Schedule, contain personal information about individuals, specifically, names and contact details of individuals.
26. I have decided that it would be unreasonable to release this information for the following reasons:
- the information is not well known;
  - it is not available in full or in part from publicly-accessible sources;
  - no public purpose would be achieved through release; and
  - disclosure of the documents is likely to cause stress to the relevant individuals.
27. On this basis, I have decided that the information is conditionally exempt under subsection 47F(1) of the FOI Act.
28. Under subsection 11A(5) of the FOI Act, the Department must give you access to this material unless, on balance, it would be contrary to the public interest to do so.
29. In weighing up the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account the extent to which disclosure would promote the objects of the FOI Act by informing debate on a matter of public importance, however I do not consider that this factor carries much weight in the context of personal information.
30. I have weighed against the relevant factors the extent to which disclosure:
- could reasonably be expected to prejudice the protection of individuals' right to privacy; and
  - would circumvent existing procedures and protocols used by the Department to protect the privacy of its staff.

31. Based on the above, I have decided that in the circumstances the public interest for disclosure of the information is outweighed by the public interest against disclosure.
32. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) in making this decision.
33. In summary, I have decided that this information is conditionally exempt under subsection 47F(1). Furthermore, I have decided that on balance, it would be contrary to the public interest to release this information.

#### Section 47G of the FOI Act

34. Subsection 47G(1) of the FOI Act relevantly provides that:

*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...*

35. I am satisfied that three (3) documents contain information about the business affairs of organisations, specifically matters relating to their administration of claims under the Job Services Australia program (as the employment services program administered by the Department was previously known). I am further satisfied that disclosure of this information could reasonably be expected to unreasonably affect those organisations adversely in respect of their lawful business affairs. The matters dealt with in the material were not concluded at the time the documents created, and disclosure of the material could reasonably be expected to result in a reduction in the number of job seekers seeking to use those organisations' services, and consequently reduce their access to funding under the jobactive program.
36. On this basis, I have decided that the information is conditionally exempt under subsection 47G(1) of the FOI Act.
37. Under subsection 11A(5) of the FOI Act, the Department must give you access to this material unless, on balance, it would be contrary to the public interest to do so.
38. In weighing up the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken into account the extent to which disclosure would:
- would promote the objects of the FOI Act by increasing scrutiny of government activities; and
  - promote effective oversight of government expenditure.
39. I have weighed against the relevant factors the extent to which disclosure:
- could reasonably be expected to prejudice the Department's relationships with its contracted service providers;

- could interfere with the right of a third party business organisation to conduct its lawful business affairs without undue disruption; and
- could have an impact upon the Department's ability to administer its employment services programmes.

40. Based on the above, I have decided that in the circumstances the public interest for disclosure of the information is outweighed by the public interest against disclosure.
41. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) in making this decision.
42. In summary, I have decided that this information is conditionally exempt under subsection 47G(1). Furthermore, I have decided that on balance, it would be contrary to the public interest to release this information.

**Rights of review**

43. I have set out your rights to seek a review of my decision at **Attachment B**.
44. Should you have any enquiries concerning this matter, please do not hesitate to contact me via email at [foi@employment.gov.au](mailto:foi@employment.gov.au).

Yours sincerely



James Ramsay  
Government Lawyer  
Information Law Team  
Corporate Legal  
13 July 2017

## Attachment A

## Schedule of Documents

Document Number	Page number	Date	Description	Comments
1	1-4	01/04/15 (seen by Minister)	Briefing to Assistant Minister Hartsuyker regarding Tender Outcomes: Employment Services 2015-2020	Released in part  Irrelevant information redacted: s22 of the FOI Act  Exemptions claimed: <ul style="list-style-type: none"> <li>• s47C of the FOI Act (deliberative processes)</li> <li>• s47F of the FOI Act (personal information);</li> <li>• s47G of the FOI Act (business information)</li> </ul>
2	5	08/04/15 (noted by Assistant Minister)	Extract of Briefing to Assistant Minister Hartsuyker regarding Tender Outcomes: Employment Services 2015-2020 with handwritten note addressed to departmental staff	Released in part  Irrelevant information redacted: s22 of the FOI Act
3	6-9	27/03/15 (received by Assistant Minister)	Briefing to Assistant Minister Hartsuyker regarding Tender Outcomes: Employment Services 2015-2020	Released in part  Irrelevant information redacted: s22 of the FOI Act  Exemptions claimed: <ul style="list-style-type: none"> <li>• s47C of the FOI Act (deliberative processes)</li> <li>• s47F of the FOI Act (personal information);</li> <li>• s47G of the FOI Act (business information)</li> </ul>
4	10-13	Undated	Briefing to Assistant Minister Hartsuyker regarding Tender Outcomes: Employment Services 2015-2020	Released in part  Irrelevant information redacted: s22 of the FOI Act  Exemptions claimed: <ul style="list-style-type: none"> <li>• S47C of the FOI Act (deliberative processes)</li> </ul>

				<ul style="list-style-type: none"><li>• s47F of the FOI Act (personal information);</li><li>• s47G of the FOI Act (business information)</li></ul>
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## Attachment B - Your rights of review

### Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The Information Law Coordinator  
Information Law, Practice Management and Corporate Advising Branch  
Department of Employment  
Location Code: C12MT1-LEGAL  
GPO BOX 9880  
CANBERRA ACT 2601

Email: [foi@employment.gov.au](mailto:foi@employment.gov.au)

### External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at [www.oaic.gov.au](http://www.oaic.gov.au), within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC or Commonwealth Ombudsman about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

We are advised by the AIC that applications for review or complaint must be lodged with the AIC in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218  
Sydney NSW 2001  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
In person: Level 3, 175 Pitt Street  
SYDNEY NSW 2000

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.