



22 May 2017

Jeremy Nadel

By email: [foi+request-3279-ba99708a@righttoknow.org.au](mailto:foi+request-3279-ba99708a@righttoknow.org.au)

Dear Mr Nadel,

### **Freedom of Information Decision: Ref 16/17-34**

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I refer to your email received by the Fair Work Commission (**Commission**) on 23 March 2017 in which you seek access to the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

*In accordance with the Freedom of Information Act 1982, I am requesting the document Catalyst Services Enterprise Agreement 2014 AG2014/10012. In regards to this document I also request:*

- 1) *The Form F17-Employer's statutory declaration in support of an application for approval of an enterprise bargaining agreement made by Robert Malpass on behalf of Catalyst Recruitment Services Pty Ltd (the F17).*
  - (a) *In regards to the F17, I also request that the following information contained within it not be redacted:*
    - (i) *How many employees cast a vote;*
    - (ii) *How many employees voted to approve the agreement;*
    - (iii) *The signature and date of the person making the F17;*
    - (iv) *The signature and date of the person witnessing the declaration of the F17.*
- 2) *The Form F16 - Application for approval of an enterprise bargaining agreement made by Robert Malpass on behalf of Catalyst Recruitment Services Pty Ltd (the F16)*
  - a) *In regards to the F16, I also request that the following information not be redacted:*
    - i) *all names;*
    - ii) *all signatures and dates;*
    - iii) *all names and/or signatures in the box titled "signature of person making the agreement;*
    - iv) *on page 5/5 the name and signature of the signatory whose position/capacity is IR/ER.*
- 3) *In regards to the Catalyst Services Enterprise Agreement 2014 AG2014/10012, I request that the following information not be redacted:*
  - a) *All names and/or signature in all boxes titled "signatories to the agreement";*
  - b) *All names and signatures included in the box titled "authorised employee representative details";*
  - c) *The name written in all spaces that are labelled "A person duly authorised to give this undertaking on behalf of the employer.";*
  - d) *The name of the addresser of the email sent to deputy president Kovacic on the 18th of December 2014 titled "AG2014/10012 Application FOR approval of the Catalyst Services Enterprise Agreement 2014".*

On 24 March 2017 I advised you that an unredacted copy of the *Catalyst Services Enterprise Agreement 2014* was publicly available to download from the Commission's website. On 28 March 2017 you clarified that you no longer wished to proceed with part 3 of your request.

The 30 day statutory time period for processing your request commenced on the day after the day on which your request was received (subsection 15(5) of the FOI Act). This timeframe was extended by 30 days in order to consult with third parties pursuant to s 15(6) of the FOI Act. The due date to issue a decision on your request is therefore **22 May 2017**.

## **Decision**

A search of the Commission's records was conducted and the following 3 documents comprising 22 pages were identified as falling within the scope of your request:

1. Form F16 – Application for approval of the *Catalyst Services Enterprise Agreement 2014* comprising 7 pages;
2. Form F17 – Employer's statutory declaration in support of an application for approval of the *Catalyst Services Enterprise Agreement 2014* comprising 14 pages; and
3. Attachment to Form F17 – notice of employee representational rights comprising 1 page.

My decision is to grant access in full to the Form F16 and the notice of employee representational rights, and grant access in part to the Form F17.

## **Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents.

## **Information considered**

In reaching my decision, I have considered the following:

- the *Freedom of Information Act 1982* (Cth) (**FOI Act**);
- the Australian Information Commissioner's FOI Guidelines issued under s 93A of the FOI Act (**FOI Guidelines**);
- the terms of your request;
- relevant case law; and
- the Commission documents within scope.

## **Reasons for decision**

I have decided to redact the home address, signature, contact phone number and professional membership number of the witness to the Form F17. The reasons for my decision are set out below.

## ***Section 47F of the FOI Act – unreasonable disclosure of personal information***

Section 47F of the FOI Act relevantly provides:

### *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.*

The term, "personal information", is defined in s 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth) (Privacy Act). Section 6 of the Privacy Act defines personal information as:

*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.*

The FOI Guidelines state that, as discussed in '*FG and National Archives of Australia* [2015] AICmr 26, relevant factors in determining whether disclosure is unreasonable include:

- *the nature, age and current relevance of the information*
- *any detriment that disclosure may cause to the person to whom the information relates*
- *any opposition to disclosure expressed or likely to be held by that person*
- *the circumstances of an agency's collection and use of the information*
- *the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act*
- *any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and*
- *whether disclosure of the information might advance the public interest in government transparency and integrity.*<sup>1</sup>

I am satisfied that the Form F17 contains the personal information of the individual making the statutory declaration and the individual witnessing the statutory declaration.

In relation to the witness, the document contains their signature, full name, qualification, professional membership number, home address and phone number. The FOI Guidelines state that personal information can include a person's name, address, telephone number and signature.<sup>2</sup> I have undertaken third party consultation with the witness.

The witness has objected to disclosure of their personal information in the Form F17 on the following grounds:

- *widespread circulation could cause stress on the individual and their family by exposing them to undesirable contact; and*
- *disclosure of the individual's residential address, in particular, could potentially compromise their safety.*

I have also had regard to the following considerations:

- *the information is not well known or available from publicly accessible sources;*

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<sup>1</sup> FOI Guidelines at [6.143].

<sup>2</sup> FOI Guidelines at [6.130].

- the witness to whom the information relates is not associated with the matters dealt with in the document;
- disclosure is unlikely to advance the public interest in government transparency and integrity;
- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act; and
- the witness is employed by a private organisation and is not a public servant performing public duties.<sup>3</sup>

For these reasons, I am satisfied that it would be unreasonable to disclose this information. The information is therefore conditionally exempt under s 47F of the FOI Act.

In finding the information conditionally exempt under s 47F, I am required to consider whether disclosure would be contrary to the public interest test outlined in s 11A(5) of the FOI Act.

In relation to the name and qualification of the witness, I have considered the following factors in favour of disclosure<sup>4</sup>; namely, that disclosure would:

- promote the objects of the FOI Act by facilitating and promoting public access to information;
- reveal background or contextual information that informed the Commission's decision to approve the *Catalyst Service Enterprise Agreement 2014*; namely, that the Form F17 was properly witnessed by an authorised witness<sup>5</sup>; and
- contribute to the administration of justice generally. I consider that the principle of open justice supports the release of this material, noting Finkelstein J's observation in *ACCC v ABB Transmission and Distribution Ltd (No. 3)*: '*if it be that the common law does not permit access to written evidence or exhibits (that is to say to the material upon which the judge has relied to decide a case) then the rule of open justice will not effectively secure its objectives.*'<sup>6</sup>

In relation to the signature, professional membership number, home address and contact phone number of the witness, the only factor in favour of access to the information is that disclosure would promote the objects of the FOI Act by facilitating and promoting public access to information.

I have also considered the factors against disclosure in both cases; namely, that disclosure:

- could reasonably be expected to prejudice the protection of an individual's right to privacy; and
- could reasonably be expected to harm the interests of an individual or a group of individuals.<sup>7</sup>

In relation to the name and qualification of the witness, I consider that the public interest is weighted more heavily in favour of disclosure and that giving access to the information would, on balance, not be contrary to the public interest.

In relation to the signature, professional membership number, home address and contact

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<sup>3</sup> See *'CV' and National Gallery of Australia* [2014] AICmr 98 at [20] and *'IN' and Australian Taxation Office* [2016] AICmr 33 at [34].

<sup>4</sup> FOI Guidelines at [6.22].

<sup>5</sup> See <https://www.ag.gov.au/Publications/Statutory-declarations/Pages/List-of-authorised-witnesses.aspx>.

<sup>6</sup> [2002] FCA 609 at [4].

<sup>7</sup> FOI Guidelines at [6.22].

phone number of the witness, I consider that the public interest is weighted more heavily against disclosure and therefore giving access to the conditionally exempt material would, on balance, be contrary to the public interest.

In relation to the individual making the statutory declaration, the document contains their full name, work address, signature and position. I am satisfied that it was not reasonably practicable to consult with the individual. In any case, I do not consider that it would be unreasonable to disclose their personal information, having regard to the following factors:

- the information is available from publicly accessible sources, such as the *Catalyst Services Enterprise Agreement 2014*;
- the individual to whom the information relates is known to be associated with the matters dealt with in the document; namely, as the author of the document;<sup>8</sup> and
- the individual was the employer representative signatory to the *Catalyst Services Enterprise Agreement 2014* and the person duly authorised to give the s 190 undertaking on behalf of the employer.

The Form F16 is authored by the same individual as the Form F17. For the reasons given above, I do not consider that disclosure of the individual's personal information in this document would be unreasonable.

### **Release of documents**

Under s 27A of the FOI Act, the Commission must not give access to the name and qualification of the witness unless, after all the opportunities of the witness for review or appeal in relation to my decision to give access to the information have run out, the decision to give access still stands, or is confirmed. The third party has 30 days to apply for internal review or Information Commissioner review of my decision. The information will be withheld under s 27A until all opportunities for review or appeal of my decision to give access to the information have run out, and the access decision still stands.

### **Review rights**

#### Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Commission of my decision. Any request for internal review must be made to the Commission within 30 days of being notified of my decision. The internal review will be conducted by an officer other than the original decision-maker and the Commission must make a review decision within 30 days.

Applications for internal review should be sent to:

**Bernadette O'Neill**  
**General Manager**  
**Fair Work Commission**  
**GPO Box 1994**  
**Melbourne VIC 3001**

Email: [generalmanager@fwc.gov.au](mailto:generalmanager@fwc.gov.au)

[Review by the Office of the Australian Information Commissioner](#)

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<sup>8</sup> See redacted copy of Form F17 available at <http://www.abc.net.au/cm/lb/7795234/data/stat-dec-showing-number-of-votes-data.pdf>.

Under s 54L of the FOI Act, you may apply to the Information Commissioner for review of my decision. An application for review by the Information Commissioner must be made in writing within 60 days of this notice, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

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

You may complain to the OAIC about action taken by the Commission in relation to your FOI request.

Your enquiries to the OAIC can be directed to:

Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Information about how to make a complaint to the OAIC can be found at:  
<https://www.oaic.gov.au/freedom-of-information/foi-complaints>.

### **Contacting the FOI Section**

If you wish to discuss this matter, I can be contacted by phone or email as below.

Yours sincerely

Haydar Tuncer  
Freedom of Information Officer  
Reporting, Planning and Legal  
Fair Work Commission  
Telephone: (03) 8656 4856  
Email: [foi@fwc.gov.au](mailto:foi@fwc.gov.au)