



11 September 2018

Steve Andsom

BY EMAIL: foi+request-4434-63be7e58@righttoknow.org.au

In reply please quote:

FOI request: FA 18/03/00545

File number: ADF2018/29046

Dear Mr Andsom

Freedom of Information (FOI) Act—decision on access request

The purpose of this letter is to advise you of the decision of the Department of Home Affairs ('the Department') on your request for access to documents under the *Freedom of Information Act 1982* ('the FOI Act'). The Department received your FOI access request on 11 March 2018.

1 Scope of request

You have requested access to the following documents:

A copy of the new term of labour agreement for Teys Australia Naracoorte Pty Ltd.

2 Authority to make decision and relevant material

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 records.

In reaching my decision I have referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access
- the Department's guidance material on the FOI Act.

3 Documents identified within scope of request

The Department has identified one document as falling within the scope of your request, as follows:

1. Labour agreement between the Department of Home Affairs and Teys Australia Naracoorte Pty Ltd – 31 pages

This document was in the Department's possession on 11 March 2018, when the Department received your request.

4 Decision

I have assessed the document that the Department has identified as falling within the scope of your request. My decision is to release the document in part, by providing an edited copy of the document from which I have deleted exempt and irrelevant material.

I have provided the reasons for my decision below.

5 Reasons for decision: irrelevant material

5.1 Section 22(1)(a)(ii) of the FOI Act – material irrelevant to request

Section 22(1)(a)(ii) of the FOI Act applies if an agency or Minister decides that giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.

I have decided that the parts of page 31 of the document that I have marked using the 's. 22(1)(a)(ii)' redaction would disclose information that could reasonably be regarded as irrelevant to your request. The material in question reveals the personal details of officers not in the Senior Executive Service (SES).

On 12 March 2018, in acknowledging receipt of your FOI request, the Department advised you that it is its policy is to exclude these staff personal and contact details from documents that fall within the scope of an FOI request.

The acknowledgement letter further stated that if you wished the Department to consider the material containing staff personal and contact details as being within the scope of your request, you should contact us to advise that you wished to access this material. As you have not advised that you wish to access the material containing staff personal and contact details, I have taken it that you agree to the Department considering this information as irrelevant to your request.

I consider the remaining material in the document to be relevant to your request.

6 Reasons for decision: conditional exemptions

6.1 Section 47F of the FOI Act: public interest conditional exemptions – personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s. 4 of the FOI Act and s. 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked with the 's. 47F' redaction on page 31 of the document would disclose personal information relating to people associated with Teys Australia Naracoorte. The information is the names of the Teys Australia Naracoorte employees and director who signed the documents, along with their signatures. The material would identify the individuals in question, either directly or indirectly.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

I note that one of the individuals, Kirstine Jackson, is identified on the Teys Australia website as a member of the company's senior leadership team. Information from various publicly available sources further refers to Clifford Geoffrey Teys being a director of the company.

While these two individuals are not publicly known to have been signatories of the agreement document, they are publicly known to be a senior employee or director of the company, respectively. I consider that it would be reasonable to expect that people involved in senior roles at the company would be involved with signing these types of documents. I therefore consider that any adverse effect that would result from releasing information indicating that the individuals in question were signatories to the document would be minimal. Releasing the names and position titles of these two individuals would not involve the unreasonable disclosure of personal information, and as a consequence I have released this information.

However, information identifying the third Teys Australia Naracoorte staff member who signed the documents, along with the signature of all three individuals, is not available from publicly available resources. I further consider that the individuals in question would not agree to the release of this information.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard in subsection 6.3 of this decision below.

6.2 Section 47G(1)(a) of the FOI Act: public interest conditional exemptions – business

Section 47G(1)(a) of the FOI Act permits the conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to unreasonably affect an organisation adversely in respect of its lawful business, commercial or financial affairs.

The document within the scope of the request contains information concerning the business, commercial or financial affairs of an organisation, namely Teys Australia Naracoorte Pty Ltd. The document reveals the terms of the labour agreement agreed to between the Department and Teys Australia Naracoorte.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business or professional affairs of a person or the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) the extent to which the information is well known

- (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the documents
- (c) the availability of the information from publicly accessible sources, and
- (d) any other matters that the Department considers relevant.

I considered that the following information in the documents is available from publicly available sources and as such, disclosure could not be expected to adversely affect the operations of Teys Australia Naracoorte:

- information indicating that the Department and Teys Australia Naracoorte were parties to the agreement (page 20)
- the date the agreement came into effect (as indicated by the signature dates on page 31)
- the address and Australian Business Number of Teys Australia Naracoorte (page 20, page 31)
- the identities of two of the senior employees of Teys Australia Naracoorte who signed the documents
- the main body of the labour agreement (contained on pages 1 to 19), the remaining material in Schedule 1 (page 20), parts of Schedule 3 (pages 22-23) and all of Schedules 2, 4, 5, 6 and 7 (pages 21 and 24-30) – these sections of the document contain the same text that appears in the standard meat industry labour agreement template that was previously published on the Department's website.

However, the following information contained in the document is not the public domain:

- the specific terms of the agreement between Teys Australia Naracoorte and the Department, where the terms differ from the standard terms included in the published labour agreement template (contained in Schedule 3, page 22).

I consider that the release of certain information contained on page 22 of the document would have an unreasonably adverse effect on the lawful business, commercial or financial affairs of Teys Australia. The material in question contains the ceiling number of sponsored persons, work location and other terms of the contract. I consider that the information is commercially sensitive and that Teys Australia Naracoorte would be at a commercial disadvantage if the information were released to the public.

I have therefore decided that parts of page 22 of the documents are conditionally exempt under section 47G of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard in subsection 6.3 of this decision below.

6.3 The public interest test

As I have decided that parts of the document are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

Having regard to the above:

- I am satisfied that access to the document would promote the objects of the FOI Act.
- I consider that the subject matter of the document does have the character of public importance and that there may be some public interest in the material that is conditionally exempt under section 47G(1)(a), particularly the material revealing the ceiling number of sponsored persons allowed under the agreement.
- I consider that no insights into public expenditure will be provided through examination of the document.
- I am satisfied that you do not require access to the document in order to access your own personal information.

Disclosure of the document would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

I have also considered the factors that weigh against the release of the conditionally exempt information in the document.

- The disclosure of the personal information which is conditionally exempt **under section 47F** of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy.
- The Department is committed to complying with its obligations under the Privacy Act 1988, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of the personal information contained within the document.
- I consider that the disclosure of the parts of the document that are conditionally exempt under **section 47G(1)(a)** of the FOI Act could reasonably be expected to prejudice the competitive commercial activities of third party organisations. I consider that this factor weighs heavily against disclosure.
- Disclosure of the parts of the document that is conditionally exempt under section 47G(1)(a) would also result in businesses with whom the Department has entered into labour agreements no longer having trust in the Department's capacity to treat their business information in a confidential manner. These businesses would be less likely to cooperate with and provide information to the Department in the future. I consider this factor also weighs against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*

- b) *access to the document could result in any person misinterpreting or misunderstanding the document;*
- c) *the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
- d) *access to the document could result in confusion or unnecessary debate.*

I have not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

7 Reasons for decision: access to edited copies with irrelevant material deleted

7.1 Section 22(2) of the FOI Act – access to edited copies

Section 22(2) of the FOI Act further provides that an agency must provide access to an edited copy of a document when:

- the agency has identified that a document contains irrelevant material, and
- it is possible for the agency to prepare an edited copy of the document from which it has deleted the irrelevant material.

As I have explained above, I have determined that two pages of the labour agreement document (pages 22 and 31) contain exempt material or material that is irrelevant to your request.

I have also determined that I am able to prepare an edited copy of this document by redacting the exempt and irrelevant material. I am therefore releasing to you an edited copy of this document as is required under section 22(2) of the Act.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 Your Review Rights

Internal Review

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

By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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 this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

10 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

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 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 Home Affairs as the relevant agency.

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Claire Bartle
Authorised Decision Maker
Department of Home Affairs