



Australian Government

Department of Immigration and Border Protection

26 May 2014

In reply please quote:

FOI Request FA 14/03/00149

File Number ADF2014/7556

Deep Thought

Sent to email: foi+request-545-45978203@righttoknow.org.au

Dear Deep Thought,

Freedom of Information request – decision on request

This letter refers to your request received on 5 March 2014 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

All details of subcontracts between Transfield Services and Wilson Security as per the "Heads of Agreement" for services rendered on Nauru and Manus Island Regional Processing Centers.

Decision

My decision is to release the documents within the scope of your request with exemptions.

Due to the nature of the documents and the potential impact which they would have on Transfield Services commercial or business affairs, consultation was undertaken in accordance with section 27 of the FOI Act. Transfield Services has made a number of objections to the release of information within the scope of your request.

Some information I have decided to release cannot be provided to you at this stage, because it is subject to Transfield Services exercising their review rights. At review a decision could be made to affirm my decision or to vary my decision, exempting some or all of the information which Transfield Services has objected to release. A schedule of documents affected by Transfield Service's review rights is attached.

Please see the attached Decision Record and Schedule of Documents for information on those documents which have been exempted or refused as part of this decision.

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Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department my 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@immi.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 my 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.

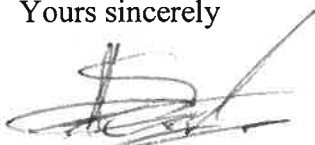
How to make a complaint about the handling of this FOI request

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



Ashley Smith
Authorised decision maker
FOI and Privacy Policy Section
Ministerial, Executive and External Accountability Branch
Department of Immigration and Border Protection
Telephone (02) 6225 8037
Email foi@immi.gov.au

Attachments

- Attachment A - Decision Record
- Attachment B - Schedule of Documents
- Documents released



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Department of Immigration and Border Protection

Attachment A

DECISION RECORD

Request Details

FOI Request FA 14/03/00149

File Number ADF2014/7556

Scope of request

All details of subcontracts between Transfield Services and Wilson Security as per the "Heads of Agreement" for services rendered on Nauru and Manus Island Regional Processing Centers.

Documents in scope

1. Departmental electronic document – Subcontract between Transfield Services and Wilson Security – containing 80 folios.

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 or to amend or annotate departmental records.

Information considered

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental files and/or documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The department's FOI handbook

Reasons for decision

I have considered the document within the scope of your request and applied exemptions in part or in full to the document as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Section 22 - Deletion of exempt matter or irrelevant material

(1) *Where:*

(a) *an agency or Minister decides:*

(i) *not to grant a request for access to a document on the ground that it is an exempt document; or*

(ii) *that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and*

(b) *it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:*

(i) *would not be an exempt document; and*

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- (ii) would not disclose such information; and*
- (c) it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy; the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.*

I have used the power set out in section 22 to delete exempt material. In my opinion, documents which I have deleted in part contain information that is exempt under sections 47(1)(b) or 47F(1) of the FOI Act. Justification for the exemptions is set out in the following paragraphs.

Section 47 - Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or*
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.**
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or*
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or*
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or person acting on behalf of the organisation.**
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth or a State or by a local government authority.*

I've determined that information within the documents which I am exempting pursuant to Section 47(1)(b) is information which holds a significant commercial value that could reasonably be expected to be destroyed or diminished if the information were disclosed.

The department seeks the information provided by Transfield Services to fulfil its obligations under the *Migration Act 1958*. The information has been supplied on the expectation that it will only be used for the purposes for which it was supplied and would be treated as confidential.

The commercial information is not known outside of Transfield Services, Wilson Security and/or the department. If such information were to be disclosed, Transfield Services' competitors would be likely to use the information to gain a competitive advantage against Transfield Services for the purposes of similar subcontracts with Transfield Services, the Commonwealth or other entities, which would diminish the value of the information.

During formal consultation with Transfield Services they have advised that the value of the information that is subject to this exemption would be destroyed or diminished if disclosed, considering the context and nature of the information and its ability to be utilised by industry competitors.

I consider that if a competitor was given an opportunity to peruse parts of the contract, specifically the parts that contain commercially valuable information, those businesses would utilise that information to the fullest extent within the industry. This could reasonably be expected to result in its value being diminished.

The information being exempt specifies specific dollar values, specific time frames and/or specific details in which are unique to this particular contract. This decision has taken into consideration all publically available contractual information involving this department which is able to be perused by the community when it comes to discharging functions that Transfield Services is contracted to provide. In taking such information into consideration I find that all of what is exempt under Section 47(1)(b) for this decision to be unique information that Transfield Services' competitors would find advantageous due to the specifics of the information.

In accordance with the FOI Act and Office of the Australian Information Commissioner's Guidelines, I consider that the information provided by Transfield Services has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Section 47F – Public interest conditional exemptions – personal privacy

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.*

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

The documents that are exempt in part, under section 47F(1) of the FOI Act contain personal information of Transfield Services & Wilson Security employees. The department has taken measures to withhold third party company employee names and signatures to protect the individual(s) right to privacy.

The information itself identifies non-government employees within Transfield Services & Wilson Security which were provided for the purposes of signing the Transfield Services contract, this information was provided on the basis it would be kept confidential as the information is not well known or accessible from publically available sources.

The folios themselves provide details that Transfield Services & Wilson Security have signed the contract which provides context to the information being exempt.

Having formed the view that the documents are of a kind to which section 47F(1) does apply, I am required to consider whether disclosure of the documents would be contrary to the public interest.

I have considered:

Arguments in favour of the disclosure of the documents include:

- a person having a general right of access to any material held by the government;
- there is a general public interest in making information held by the Government accessible to the public;

Arguments that against disclosure of the documents include:

- it is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy

The information contained within the identified documents wholly relates to a person other than you whom is a non-government employee. The department is obliged to take action to prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight. There is no current public interest in determining the actual names and signatures of representatives within third party companies which are displayed within a signed contract.

I consider that disclosure of this information would be contrary to the public interest and it is therefore exempt from disclosure under section 47F(1) of the FOI Act

Ashley Smith
Authorised decision maker
FOI and Privacy Policy Section
Ministerial, Executive and External Accountability Branch
Department of Immigration and Border Protection
Telephone (02) 6225 8037
Email foi@immi.gov.au

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Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/03/00149

File Number ADF2014/7556

1. Departmental electronic document: Subcontract between Transfield Services and Wilson Security – containing 80 folios

Folio	Description	Decision	Legislation
1		Released in full	
2	Specified time frame relating to renewal of contract	Released in part	S47(1)(b)
3-4		Released in full	
5	Specified dollar amount of subcontract works, liability agreement surrounding particular acts	Released in part	S47(1)(b)
6		Released in full	
7	Specified suspension details and liability costs associated with suspension	Released in part	S47(1)(b)
8	Information surrounding set off or deduction arrangements and tax incurrence	Released in part	S47(1)(b)
9	Indemnity arrangements surrounding contract	Released in part	S47(1)(b)
10		Released in full	
11	Specified time frame relating to termination for convenience	Released in part	S47(1)(b)
12	Specified dollar amount and details of entitlements (or specified non-entitlements) surrounding termination for convenience	Released in part	S47(1)(b)
13-20		Released in full	
21	Transfield Services & Wilson Security staff names, payment arrangements	Released in part	S47F(1), S47(1)(b)
22	Detailed information concerning contract fees and charges including breakdown of costs	Released in part	S47(1)(b)
23-24	Detailed information concerning contract fees and charges including breakdown of costs	Exempt in full	S47(1)(b)
25		Released in full	
26	Dollar values and parameters (including any limitations) surrounding insurances	Released in part	S47(1)(b)
27-68		Released in full	
69	Information surrounding a capped amount associated with the Abatement Regime	Released in part	S47(1)(b)
70-76		Released in full	
77	Transfield Services and Wilson Security staff names and signatures	Released in part	S47F(1)

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78-80	Pricing schedule containing breakdowns of specific fees, charges and costs	Released in part	S47(1)(b)
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2. Information subject to review rights

Folio	Description	Legislation
35	Performance Management Framework, Reports	Section 27 consultation
67-70	Performance Management Framework, Reporting and Abatement Regime, Excusable Performance Failure	Section 27 consultation