



26 August 2020

Mr A Hirsch

BY EMAIL: [@](#)

**In reply please quote:**

FOI Request: FA 19/12/01273

File Number: OBJ2019/63315

Dear Mr Hirsch

**Freedom of Information (FOI) request - Access Decision**

On 17 December 2019, the Department of Social Services received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act). The request is more closely associated with the functions of the Department of Home Affairs (the Department) and your request was transferred to this Department on 20 December 2019.

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

**1 Scope of request**

You have requested access to the following document:

*The April 2019 consultant report to DSS on subcontracting under the Humanitarian Settlement Program. This report was referenced in the recent ANAO report 'Delivery of the Humanitarian Settlement Program' in paragraph 2.62.*

**2 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 document or to amend or annotate records.

**3 Relevant material**

In reaching my decision I referred to the following:

- the terms of your request
- the document 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)
- consultation response from an affected third party formally consulted in accordance with section 27 of the FOI Act

#### **4 Document in scope of request**

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 17 December 2019 when your request was received.

#### **5 Decision**

The decision in relation to the document in the possession of the Department which falls within the scope of your request is to release one document in part with deletions.

#### **6 Documents subject to third party appeal rights**

Although I have decided to release parts of the document to you, an affected third party has objected to the disclosure of the document.

I am unable to provide access to the document until the affected third party has had an opportunity to exercise their appeal rights. The Department will keep you informed in relation to any third party review. The affected third party has 30 days to seek a review of my decision.

#### **7 Reasons for Decision**

Detailed reasons for my decision are set out below. My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

##### **7.1 Section 47G of the FOI Act – Business Affairs**

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

I am satisfied that parts of the document contain commercial in-confidence information which relate to the business, commercial or financial affairs of an organisation.

In determining whether disclosure of the information within the document would or could reasonably be expected to adversely affect 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 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.

The information contained within the document is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources.

The affected third party has been consulted under section 27 of the FOI Act and has made submissions in support of the exemption contention. The affected third party has made submissions that the document is exempt in full under section 47G.

I am satisfied that the disclosure of parts of the document would, or could reasonably be expected to, have an adverse impact on the commercial affairs of the organisation and would, or could reasonably be expected to, destroy or diminish the commercial value of the information as a result of the disclosure.

As such, I have decided that parts of the document 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 at paragraph 6.2 below.

## **7.2 The public interest – section 11A of the FOI Act**

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.
- the subject matter of the document does not seem to have a broad characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a narrow section of the public.
- the disclosure of this document does provide insights into public expenditure.
- the document does not contain any personal information and that this factor is not relevant in this matter.

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

- disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to prejudice the

competitive commercial activities of a commercial entity. I consider there to be a public interest in ensuring that the competitive commercial activities of the affected third parties are not compromised or prejudiced in any way. I consider that any adverse effect to the lawful business, commercial or financial affairs of the affected organisations would be contrary to the public interest.

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 would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

## **8 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. 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: [xxx.xxxxxxx@xxxxxxxxxxx.xxx.xx](mailto:xxx.xxxxxxx@xxxxxxxxxxx.xxx.xx)

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 <https://www.oaic.gov.au/freedom-of-information/foi-review-process>.

**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](mailto: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 [xxx@xxxxxxxxxxxx.xxx.xx](mailto:xxx@xxxxxxxxxxxx.xxx.xx)



**P. O'Neill**  
**Authorised Decision Maker**  
**Department of Home Affairs**