



17 April 2020

JS

By Email: [foi+request-6168-973e1c57@righttoknow.org.au](mailto:foi+request-6168-973e1c57@righttoknow.org.au)

Dear JS

### Freedom of information request - Decision

I refer to your email dated 17 February 2020 to the Australian Building and Construction Commission (**ABCC**) requesting document access under the *Freedom of Information Act 1982 (FOI Act)* in the following terms:

*“Under FOI I seek access to the document (or documents) that contains the detail of the arrangement(s) between the ABCC and the promoter of the IBenefit program. I also seek access to the document (or documents) that contains the detail of the significant savings, convenience and preferential treatment through around 400 providers and additional dining offers that employees of the ABCC obtain through membership of the IBenefit program.”*

This letter sets out my decision in relation to your FOI request.

For the purpose of giving this decision, I refer to the above request as the **‘FOI Request’**.

On 19 February 2020, the ABCC acknowledged receipt of the FOI Request pursuant to subsection 15(5) of the FOI Act.

On 13 March 2020, the ABCC gave notice that the period for notification of a decision on the FOI Request had been extended by 30 days pursuant to subsection 15(6) of the FOI Act to facilitate consultation under sections 27 and 27A of the FOI Act.

This consultation has been finalised. However, those consulted have review and appeal rights. Sections 27 and 27A of the FOI Act prevent document access being given before these review and appeal rights have been exhausted, which may change the access decision.

### Search

The ABCC identified five documents that fall within the scope of the FOI Request, which are set out in **Attachment A**.

## Decision

I am an authorised decision-maker within the meaning of subsection 23(1) of the FOI Act. In reaching my decision, I have considered the following:

- the terms of the FOI Request;
- the FOI Act;
- the *Freedom of Information Guidelines* issued by the Office of the Australian Information Commissioner pursuant to section 93A of the FOI Act ('**FOI Guidelines**'); and
- the submissions received during the consultation conducted under sections 27 and 27A of the FOI Act.

In summary, I have decided to give access to all documents in edited form pursuant to section 22 of the FOI Act with exempt and/or irrelevant information deleted.

### Section 22 – Access to edited copies

Section 22 provides that an agency must prepare an edited copy of a document and give the applicant access to the edited copy of the document if:

“ ...

- (a) *an agency or Minister decides:*
  - (i) *to refuse to give access to an exempt document; or*
  - (ii) *that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and*
- (b) *it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:*
  - (i) *access to the edited copy would be required to be given under section 11A (access to documents on request); and*
  - (ii) *the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and*
- (c) *it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:*
  - (i) *the nature and extent of the modification; and*
  - (ii) *the resources available to modify the document; and*
- (d) *it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.”*

I am satisfied that the documents contain information that is exempt under the FOI Act and/or information that is irrelevant to the terms of the FOI Request.

I am also satisfied that (a) it is both possible and reasonably practicable to prepare edited copies of the requested documents and (b) it is not apparent that you would decline access to the edited copies of the requested documents.

## Section 22: irrelevant information

As outlined above, section 22 of the FOI Act allows irrelevant information to be deleted from the edited copies of requested documents prepared to provide access to the remaining (disclosable) information to an applicant.

Upon examining the documents, I have identified user statistics in 'Document 3' which I consider are irrelevant to the scope of the FOI Request. Accordingly, this information has been deleted from the edited copy of the document.

The remainder of the document (relating to the savings received by ABCC employees through the iBenefit program) has been considered for release as it is relevant to the FOI Request.

## Exemption – Section 47F: personal privacy

Subsection 47F(1) provides:

*“A document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”*

Upon examining the documents, I have identified personal information about individuals in all of the documents including names, contact details and signatures.

In determining whether this personal information is conditionally exempt, I am required to consider the following factors set out in subsection 47F(2) of the FOI Act:

- *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 information;*
- *the availability of the information from publicly accessible sources;*
- *any other matters that I consider relevant.*

The personal information relating to the third parties and ABCC staff is not well known. The individuals concerned are not generally known to be associated with the matters discussed in the documents. Some of the personal information contained in the documents is publicly accessible (although not in connection with the particular matters discussed in the documents).

I note also that privacy concerns (including relating to identity security) have been raised by, and/or on behalf of, the affected individuals disclosure of their personal information. These privacy concerns may be motivated, at least in part, by the long history of ABCC personnel being subjected to abuse and threats from various persons and organisations (which have been the subject of public reporting).

The personal information also does not appear to be relevant to the scope of your request, as you are seeking access to information related to the nature of ABCC's participation in the iBenefit program rather than information about the individuals involved in its implementation.

I consider that the disclosure of the personal information within the documents would be an unreasonable disclosure of personal information about the relevant individuals. Accordingly, I have decided that this information is conditionally exempt under section 47F of the FOI Act.

#### Exemption – Section 47G: business affairs

Subsection 47G(1) provides:

*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; ...*

Upon examining the documents, I have identified information in 'Document 5' relating to the business/commercial affairs of an organisation. Disclosure of this information would show potential competitors its pricing, allowing other businesses to potentially use this information in their own offers and negotiations in the future.

I consider that this would, or could reasonably be expected to, unreasonably affect the organisation in respect of its lawful business/commercial affairs. Accordingly, I have decided that this information is conditionally exempt under section 47G of the FOI Act.

#### Public interest considerations: Sections 47F & 47G

I am now required to consider under section 11A of the FOI Act whether access to the conditionally exempt information would be contrary to the public interest. In making this assessment, I have considered the factors favouring disclosure set out in subsection 11B(3) of the FOI Act.

In respect of the personal information conditionally exempt under section 47F of the FOI Act, I do not consider that access to this information would inform debate on a matter of public importance or promote effective oversight of public expenditure (noting that it is also not the personal information of the applicant – which would favour disclosure). I have also considered that disclosure could be reasonably be expected to prejudice the individuals' right to privacy<sup>1</sup> – which is a factor weighing against disclosure.

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<sup>1</sup> *Freedom of Information Guidelines* ('FOI Guidelines') (combined November 2019), Office of the Australian Information Commissioner, paragraph 6.22.

In respect of the information relating to the business/commercial affairs of an organisation conditionally exempt under section 47G of the FOI Act, I do not consider that access to this information would inform debate on a matter of public importance. Whilst access to pricing information may promote effective oversight of public expenditure, I consider that this would be of limited effect given that the total contract value is already publicly disclosed on the Australian Government website AusTender. I have also considered that disclosure of this information could reasonably be expected to prejudice the competitive commercial activities of a third party organisation – which is a factor weighing against disclosure.

Taking all the above matters into account, I have determined that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and the information is accordingly exempt from disclosure under the FOI Act.

### **Review rights - Internal review**

I am not the principal officer of the ABCC. As a result, you are entitled under section 54 of the FOI Act to seek an internal review of my decision. An internal review will be conducted by a different officer from the original decision-maker.

Your internal review application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access.

An internal review may be submitted by sending it to **Freedom of Information Section, ABCC**, to either of the following contact addresses:

**By post:** GPO Box 9927 MELBOURNE VIC 3001 Australia

**By email:** [foi@abcc.gov.au](mailto:foi@abcc.gov.au)

Please note in your application the decision that you wish to be reviewed.

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

### **Review by the Australian Information Commissioner**

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au)

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commissioner at GPO Box 2999, Canberra ACT 2601



## Contacts

If you have any questions about this matter, please contact the ABCC's FOI Section ([foi@abcc.gov.au](mailto:foi@abcc.gov.au)).

Yours sincerely



**James Matheson**  
**Australian Building and Construction Commission**



## ATTACHMENT A – SCHEDULE OF DOCUMENTS

Reference	Date	Description	Decision
Document 1	25/11/2019	Email.	Partial disclosure (s 22): <ul style="list-style-type: none"><li>• Conditional exemption s 47F</li></ul>
Document 2	9/10/2019	Email.	Partial disclosure (s 22): <ul style="list-style-type: none"><li>• Conditional exemption s 47F</li></ul>
Document 3	8/7/2019	Report.	Partial disclosure (s 22): <ul style="list-style-type: none"><li>• Conditional exemption s 47F</li><li>• Irrelevant matters s 22</li></ul>
Document 4	19/3/2015	Email.	Partial disclosure (s 22): <ul style="list-style-type: none"><li>• Conditional exemption s 47F</li></ul>
Document 5	15/7/2014	Agreement.	Partial disclosure (s 22): <ul style="list-style-type: none"><li>• Conditional exemption s 47G</li><li>• Conditional exemption s 47F</li></ul>