



FAIR WORK  
COMMISSION

12 April 2013

Mr Jeremy Cooper-Stout  
Right To Know  
By email: [foi+request-62-c7affb4a@righttoknow.org.au](mailto:foi+request-62-c7affb4a@righttoknow.org.au)

Dear Mr Cooper-Stout

**Freedom of Information Decision on Access**  
**FOI Reference Number: 12/13-27**

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1. I refer to your application (complying with section 15) under the *Freedom of Information Act 1982 (FOI Act)* received by the Fair Work Commission (**the Commission**) on 13 February 2013.
2. I am authorised to make a decision in relation to your request pursuant to section 23 of the FOI Act.

**Your request**

3. You requested access to documents concerning:  
*any and all documents created [up to 13 February 2013] discussing the cost implications of changing the name of Fair Work Australia to the Fair Work Commission.*  
*Particularly documents which provide information how the cost of transitioning branding material and options for doing so, if possible.*

**Timeframe for processing this request**

4. Your request (complying with section 15) was received by the FWC on 13 February 2013. The statutory time limit for this request commenced on the day following the day on which your request was received (section 15(5)).
5. The statutory time frame for processing your request was extended for 30 days to consult with third parties as the nature of the documents identified as being relevant to your request relate to the business affairs of third parties (section 15(6)). Accordingly the relevant date to process your request expires 15 April 2013.

**Decision on access to documents**

6. A search of the records of this agency was conducted and 23 documents relevant to your above request were identified. Of those I have decided to release 6 documents in full and 17 documents in part.

7. I have decided that certain documents contain material that is conditionally exempt under subsection 47G(1) of the FOI Act (business affairs) and, pursuant to subsection 11A(5) of the FOI Act, is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.
8. In reaching my decision, I took the following material into account:
- documents falling within the scope of your request;
  - the FOI Act;
  - submissions made by third parties consulted under sections 27 of the FOI Act;
  - factors relevant to my assessment of whether or not disclosure of the relevant documents would be in the public interest;
  - consultations with Commission staff about:
    - the nature of the documents;
    - the organisation's operating environment and functions; and
  - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.
9. I have decided that certain documents, as referred to in the Schedule of Documents, contain material that is exempt or irrelevant. In this regard, subsections 22(1) and (2) of the FOI Act provide that:

*Scope*

(1) *This section applies 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.*

*Access to edited copy*

(2) *The agency or Minister must:*

- (a) *prepare the edited copy as mentioned in paragraph (1)(b); and*
- (b) *give the applicant access to the edited copy.*

10. In accordance with section 22, I have deleted exempt and irrelevant material from the abovementioned documents where possible and have decided to release to you the balance of the documents. Such deletions are identified in the Schedule of Documents.

**Reasons for Decision - Section 47G of the FOI Act**

11. Subsection 47G(1) of the FOI Act provides that:

(1) *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; or*
- (b) *could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

12. I have found that certain documents, as referred to in the Schedule of Documents, contain material that is exempt for release under paragraphs 47G(1)(a) and (b) of the FOI Act. The material to which I have refused access relates to the financial aspect of the third party businesses as it contains:

- Commercial in confidence quotations for rebranding work and various office stationery requested by the Commission from companies who were ultimately not successful in obtaining a contract for work from the Commission.

I have decided this material is exempt for the following reasons:

- Disclosure of companies' commercial in confidence quotations could reasonably be expected to adversely affect those companies in respect of their lawful business commercial or financial affairs. If these quotations were made publically available, it could reasonably be expected to impact on the business relationships the relevant companies have with their other clients. Quotations are individually tailored to each client on a competitive basis and if these were available to a company's other clients, this would adversely affect future business sought by the company with those clients. Such consequences are unreasonable as disclosure would have an adverse effect on their business, in circumstances where the Commission has chosen another provider and the business has not received any benefit from the provision of the quotation.
- Disclosure of quotations could reasonably be expected to prejudice the future supply of information to an agency for the purpose of the administration of matters administered by the agency. A number of the businesses who provided the relevant quotations are small businesses who are likely to be deterred from providing quotations to the Commission in the future, resulting in a reduction in the quantity of quotations able to be sought by the Commission. If the Commission is no longer able to attract smaller businesses to provide quotations for work, the Commission will be forced to seek supply of services only from regular larger operators. If the Commission is only able to attract business of a larger suppliers, this will prejudice the operations of the agency as it will create a less competitive market for the supply of services to the Commission, which will lead to increased costs and budgetary implications as well as reduction in the quality and range of services available to the Commission.

13. On this basis, I have decided that the personal information as referred to in the Schedule of Documents is conditionally exempt under subsection 47G(1) of the FOI Act.

14. Under subsection 11A(5) of the FOI Act, the department must give you access to these documents unless in the circumstances it would be, on balance, contrary to the public interest to do so.

15. When weighing up the public interest for and against disclosure under subsection 11A(5) of the FOI act, I have taken into account the following factors in favour of disclosure:

- The extent to which disclosure would:

- Promote the objects of the FOI Act, by providing access to documents of a government agency;
- Inform debate on a matter of public importance, by informing the public on particular costs associated with changing the name of a government agency;
- Promote effective oversight of public expenditure, by holding the agency accountable to costs in its choice of service provider.

I consider that the factors in favour of disclosure as outlined above are not considerably advanced by disclosure. This is because the factors in favour of disclosure are advanced by a number of other mechanisms, such as the fact that the number of and type of businesses from whom the Commission has received quotations is being disclosed, as is the quotation from the company who was successful in obtaining the contract. On this basis, I consider that disclosure of the unsuccessful quotations is unlikely to advance effective oversight of public expenditure or inform the debate on a matter of public much further than the released information will already do.

16. However I have weighed against these factors the following factors indicating that access would be contrary to the public interest:

- The extent to which disclosure would:
  - Could reasonably be expected to prejudice an agency's ability to obtain similar information in the future, by deterring small businesses from providing quotations for services for fear of their commercial in confidence information being made public;
  - Could reasonably be expected to result in procurement practices which are contrary to the Commonwealth Procurement Rules. If unsuccessful tenders for services below the relevant procurement threshold (limited tender) are disclosed, this will be necessarily exclusionary to small businesses whose business would be affected by the disclosure of same. The result of this would be that the agency could lose the most financially beneficial option for the provision of services. This would be contrary to rules of procurement including value for money, encouraging competition and efficient, effective, economical and ethical procurement;
  - Could result in a breach of confidence by the Commission. As the quotations are provided on a commercial in confidence basis, the act of disclosing such information could subject the Commission to an action in breach of confidence or affect the reputation of the Commission as an agency which meets its obligations in respect of information provided on an understanding of confidence.

I consider that the factors against disclosure are likely to have a real and significant impact on the Commission which would be contrary to the public interest. Requests for similar quotations for printing and other work are commonly made by the Commission when publications are required to be produced throughout the year and the effect of such disclosure will therefore be ongoing and not just a one-off occurrence. It is pertinent to the operation of the agency that external stakeholders can deal with the Commission on a basis of trust and confidence. I do not consider there are any other factors which would negate the effects caused by the factors indicating disclosure is contrary to the public interest.

17. Based on these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the information in the above-mentioned documents is outweighed by the public interest against disclosure.

18. I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act in making this decision.

Yours Sincerely

Sarah Attrill  
Freedom of Information/Privacy Officer  
Fair Work Commission

## Schedule of Documents

Document number	Date	Description	FOI exemption	Decision
1.	20 November 2012	Email attaching quotation from Magnetic Design	S 47G (business information)	Release in part
2.	21 November 2012	Email attaching quotation from Hush Creative Design	S 22 (irrelevant information)	Release in part
3.	28 November 2012	Email Chain - Greater than Design quotation	S 47G (business information) S 22 (irrelevant information)	Release in part
4.	28 November 2012	Email to DEEWR Re: Fair Work Amendment Bill	S 22 (irrelevant information)	Release in part
5.	3 December 2012	Email Re: Rebranding Project	S 22 (irrelevant information) S 47G (business information)	Release in part
6.	4 December 2012	Email chain - Estimated cost spreadsheet for the implementation of the Fair Work Amendment Act 2012	S 22 (irrelevant information)	Release in part
7.	5 December 2012	Email Re: Rebranding Project	S 22 (irrelevant information) S 47G (business information)	Release in part
8.	10 December 2012	Email to DEEWR Re: FWC - Estimated cost of implementating name change		Release in full
9.	January 2013	FWC Quarterly Executive Forecast Report Second Quarter	S 22 (irrelevant)	Release in part

			information)	
10.	8 January 2013	Invoice approval	S 22 (irrelevant information)	Release in part
11.	21 January 2013	Email attaching quotation from Commerce Press	S 47G (business information)	Release in part
12.	23 January 2013	Email chain - Commerce Press quotation	S 47G (business information)	Release in part
13.	24 January 2013	FWC email request for quotation from D&D Digital Printing		Release in full
14.	24 January 2013	FWC email request for quotation from Complete Office Supplies		Release in full
15.	24 January 2013	FWC email request for quotation from Big Print		Release in full
16.	30 January 2013	Email chain - D&D Digital Printing quotation	S 47G (business information)	Release in part
17.	31 January 2013	Email quotation from Big Print	S 47G (business information)	Release in part
18.	February 2013	FWC -Senate Estimates Brief February 2013 - Name Change & FW Act Amendments	S 22 (irrelevant information)	Release in part
19.	6 February 2013	Email attaching quotation from Print Logistics	S 47G (business information)	Release in part
20.	7 February 2013	Email chain - Complete Office Supplies quotation	S 47G (business information)	Release in part
21.	11 February 2013	Email attaching quotation from Commerce Press	S 47G (business information)	Release in part

22.	18 February 2013	Email chain attaching Purchase Service Request		Release in full
23.	7 March 2013	Invoice approval		Release in full



## Relevant Provisions of the Freedom of Information Act 1982

### 22 Access to edited copies with exempt or irrelevant matter deleted

#### Scope

- (1) This section applies 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
    - (iii) 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.

#### Access to edited copy

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

#### Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### S 47G Public interest conditional exemptions - business

- (1) 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; or
  - (b) Could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) 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 organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) 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, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.