



17 July 2020

FOI ref: 2699

Mr John Smith

By email: [foi+request-6343-99fd16cf@righttoknow.org.au](mailto:foi+request-6343-99fd16cf@righttoknow.org.au)

Dear Mr Smith,

### Freedom of Information Request – Decision

I refer to your request to the Department of the Treasury (the **Treasury**) on 18 May 2020, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

*I request a copy of the contract signed between the department of the Treasury, and Ernst & Young; associated with tender ID CN3681381.*

On 5 June 2020, we advised you that one of the documents within scope of your request has been transferred to the Department of Finance under section 16 of the FOI Act. My decision does not cover that document.

I am an authorised decision maker under section 23 of the FOI Act.

#### **Decision**

The Treasury has identified two documents in the scope of your request, listed in the attached schedule. I have decided to release both documents to you in part. My decision on each document is shown in the attached schedule.

The documents for release are attached.

Further information regarding my decision is set out below.

#### **Material Considered**

The material to which I have had regard in making this decision includes:

- the scope of the FOI request;
- the content of the documents subject to your request;
- the relevant provisions in the FOI Act;
- advice from subject matter experts within the Treasury;
- advice from the Department of Prime Minister and Cabinet;
- third party responses to third party consultation; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982 (the **FOI Guidelines**).

FIND TREASURY ON   

## ***Reasons for decision***

### Cabinet Material – Section 34

Section 34(3) provides that a document is exempt to the extent that it contains information the disclosure of which would reveal a Cabinet decision or deliberation, unless the existence of the deliberation or decision has been officially disclosed.

Document 1 is an Official Order. Parts of this document contain material that would reveal Cabinet deliberations or decisions that have not been officially disclosed. I am therefore satisfied that Document 1 is exempt in part under section 34(3) of the FOI Act.

### Personal Privacy – Section 47F

Section 47F of the FOI Act is a conditional exemption that applies if disclosure of a document would involve the unreasonable disclosure of personal information about any person. It also provides that, in determining whether the disclosure of the document would involve the unreasonable disclosure of such personal information, an agency must have regard to:

- 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 public sources; and
- d. any other matters that the agency considers relevant.

Documents 1 and 2 are an Official Order and a Notice of Inclusion Form. These documents contain the names, signatures and phone numbers of Ernst and Young staff involved in the contract process.

Ernst and Young were consulted on the release of information in the documents. They objected to the release of staff's personal information, including names, contact details and signatures, on the basis of personal privacy.

I have reviewed the material in the documents and the contentions raised by Ernst and Young. I am satisfied that the information is 'personal information' for the purposes of the FOI Act, it is not well known and it is not available from publicly accessible sources. I am also satisfied that disclosure of this information would be unreasonable. As such, I am satisfied that the personal information of Ernst and Young staff in documents 1 and 2 is conditionally exempt under s47F of the FOI Act.

### Public Interest

As I have found material in the documents to be conditionally exempt under section 47F of the FOI Act, I must consider whether release of this conditionally exempt material would be in the public interest.

Section 11A(5) of the Act provides that conditionally exempt material must be released unless its disclosure would, on balance, be contrary to the public interest. Section 11B(3) sets out public interest factors that are regarded as favouring release and section 11B(4) sets out factors that must not be taken into account in this process. The FOI Guidelines, to which regard must be had in making decisions of this nature, also set out factors in favour of release and factors against release.

In favour of disclosure, I have considered the objects of the FOI Act and that disclosure would increase scrutiny of government activities. Against disclosure I have considered the importance of the protection of personal privacy.

I have decided that the factors against the release of this material outweigh the factors in favour of release, and that, on balance, release would be contrary to the public interest. I have therefore decided not to release the conditionally exempt information.

***Rights of Review***

A statement setting out your rights of review in this matter is attached.

***Disclosure Log***

The Treasury endeavours to publish all documents disclosed in response to FOI requests on the Treasury website on the same day that the decision is sent to an applicant. However, the Treasury does not publish documents containing personal or business information if it would be unreasonable to publish the information. This is consistent with the arrangements established by section 11C of the FOI Act.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'P Boneham', followed by a long horizontal line extending to the right.

Patrick Boneham  
Principal Adviser  
Markets Group

## FOI 2699 Document Schedule

Doc No.	Description	Decision
1.	Schedule 3 Official Order	Exempt in part – s34(3) Cabinet Exempt in part – s47F Personal Privacy
2.	Schedule 4 Notice of Inclusion Form	Exempt in part – s47F Personal Privacy

## INFORMATION ON RIGHTS OF REVIEW

### 1. APPLICATION FOR INTERNAL REVIEW OF DECISION

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to [FOI@Treasury.gov.au](mailto:FOI@Treasury.gov.au).

**OR**

### 2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

### 3. COMPLAINTS TO THE INFORMATION COMMISSIONER

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.