



Australian Government

Australian Trade and Investment Commission

19 October 2020

John Smith
Righttoknow.org.au

By email only: foi+request-6352-bd85f5a4@righttoknow.org.au

Freedom of Information Request
Decision Regarding Release of Documents

Dear Mr Smith

Background

- 1 On 21 May 2020 you submitted an email to Austrade's Freedom of Information ("FOI") Co-ordinator in which you under the *Freedom of Information Act 1982* (the "**FOI Act**") sought access to:

"the contract between Austrade and CLEMENGER BBDO (SYDNEY) PTY LTD; in association with Cth tender ID CN3566971" (the "FOI Request").
- 2 As Austrade's FOI Co-ordinator, I confirmed receipt of your FOI Request by email dated 4 June 2020.
- 3 On 22 June 2020, I informed you by email that the requirement to conduct further consultations in regard to business documents and personal privacy made it appropriate to extend the response period by 30 days in accordance with section 15(6) of the FOI Act.
- 4 By email dated 13 July 2020, I provided a preliminary assessment of the charge of \$78.10 to you and requested further substantiation of your claim that all fees should be waived due to the particular public interest of the FOI Request. On 15 July 2020, you requested clarification and internal review of how the charges were calculated and asked me to waive the assessed fee on certain grounds under the FOI Act. On 22 July 2020 you followed up with a copy of certain information to support your waiver application (as this letter will be publicly available I will refer in general terms to the ground for waiver and the evidence you have provided, to protect your privacy).
- 5 By email dated 27 July 2020, I acknowledged your contention of ground for waiver of fees and requested that you provide further evidence to support your claim.
- 6 On 28 August 2020, I sent to you an email notifying you that I had not yet received a response to my email dated 27 July 2020 and that I would consider your request withdrawn unless you responded by 28 September 2020. You responded by email dated 28 August 2020 that you were still seeking a waiver of fees and you attached further evidence.

2 Phillip Law Street
New Acton
ACT 2601
Australia

W. www.austrade.gov.au

ABN: 11 764 698 227

If you are not the intended addressee of this letter, please notify the sender immediately and destroy this. Australia's anti-bribery laws operate overseas and Austrade will not provide business related services to any party who breaches the law and will report credible evidence of bribery.

7 By email to you on 14 October 2020, I decided to waive the assessed fee on the grounds in that email, relying on the supporting evidence you have provided.

8 This letter provides Austrade's decision about your FOI Request.

9 We intend to provide documents electronically, please advise if you require documents in hard copy.

Scope

10 On 4 June 2020, by email, I advised that unless otherwise notified within five days, we would exclude the names and contact details of government officials not at the Senior Executive Service (SES) level, and the mobile numbers of all government officials.

Exemptions

11 In making my decision, I have considered:

(a) the FOI Act; and

(b) the FOI Guidelines produced by the Office of the Australian Information Commissioner.

12 I applied two categories of exemption to documents identified as within scope of the FOI Request.

Business information

13 Section 47G(1)(a) of the FOI Act provides grounds for a conditional exemption of information concerning the business, commercial or financial affairs of an organisation or undertaking (business information), where the disclosure would, or could reasonably be expected to, unreasonably affect the 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.

14 The documents covered by the FOI Request are contracts, which are commercial in nature and therefore business information with respect to the other party of the contract, Clemenger BBDO (Sydney) Pty Ltd ("Clemenger BBDO"). The contracts were not deemed confidential by the parties, so I did not consider s45 of the FOI Act to be an applicable ground for exemption.

15 However, following consultations with Clemenger BBDO, I am satisfied that those parts of the contracts that show hourly rates of individual professionals or that would allow for the calculation of such hourly rates or pricing strategies, could, if disclosed, be reasonably be expected to unreasonably affect Clemenger BBDO's lawful business or professional affairs.

16 In particular, giving insights into the pricing strategies of a business would give competitors of that business an unfair advantage in terms of pricing their own services when competing with the business. When making a business proposition, one of the key factors in determining the proposal's attractiveness will be the question of how the pricing compares with the pricing of other businesses competing for the transaction. Knowing how Clemenger BBDO priced its services in the context of these contracts can be reasonably expected to allow its competitors to match or undercut its rates on similar engagements in the future thereby unreasonably affecting Clemenger BBDO's lawful business.

17 Section 47G is a conditional exemption. See below for public interest test discussion.

Personal privacy

18 I am satisfied that the documents listed in the Schedule as subject to section 47F contain information with the requisite characteristics of 'personal information'. The documents indicated in the Schedule contain personal information such as names, employment position/title, contact details (and telephone numbers) of other third parties.

- 19 In assessing whether a particular disclosure would be 'unreasonable', section 47F(2) sets out a number of factors which I must consider. These factors are:
- (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; and
 - (d) any other matters that the agency or Minister considers relevant.
- 20 The personal information in the documents is not well known nor available from publicly accessible sources. I also consider it relevant that the information is not your personal information and every person has a right to expect that their personal information will be securely maintained by Austrade, especially having regard to section 94 of the *Australian Trade and Investment Commission Act 1985*.
- 21 Section 47F is a conditional exemption. See below for public interest test discussion.
- 22 Section 22 of the FOI Act allows for exempt information within a document to be deleted and the rest of a document to be released. Therefore, I have redacted relevant section 47F information from the documents listed in the Schedule, and intend to release the rest of the documents.

Public interest test for conditional exemptions

- 23 In determining whether release would be contrary to the public interest, I have made an individual public interest assessment for each conditional exemption. I have combined those assessments into the following section.
- 24 Section 11B(3) of the FOI Act sets out factors favouring access to documents in the public interest, including where access would:
- (a) promote the objects of the FOI Act;
 - (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.
- 25 Paragraph 6.19 of the FOI Guidelines also provides a non-exhaustive list of other factors favouring disclosure – I have considered that list.
- 26 I have assumed that disclosing the documents sought would:
- (a) promote the objects of the FOI Act, by informing the community of the Government's operations, including, in particular, the policies, rules, guidelines, practices and codes of conduct followed by the Government in its dealings with members of the community;
 - (b) promote effective oversight of public expenditure; and
 - (c) advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies,
- so there are public interest factors in favour of disclosure.

- 27 I have specifically ensured that in making my decision I have not taken into account any of the “irrelevant factors” listed in section 11B(4) of the FOI Act.
- 28 I am also required to consider factors against disclosure. Although the FOI Act does not specifically outline factors against disclosure, I must also have regard to the FOI Guidelines. The FOI Guidelines detail a non-exhaustive list (at paragraph 6.22) of factors against disclosure. My consideration is noted in italics beneath each relevant factor. Factors against disclosure, include where disclosure:
- (a) could reasonably be expected to prejudice the protection of an individual’s right to privacy,
Austrade regularly contracts with businesses and their representatives’ privacy needs to be protected in the same way as any other individuals’ privacy under the Privacy Act 1988;
 - (b) could reasonably be expected to prejudice an agency’s ability to obtain similar information in the future,
if individuals performing tasks on behalf of Austrade need to be concerned about their personal information or their competitive pricing being released by Austrade to third parties without a legitimate reason for release, such individuals or businesses can be expected to show reluctance to work for Austrade or to disclose detailed pricing information to Austrade in the future;
 - (c) could reasonably be expected to prejudice the competitive commercial activities of an agency,
Austrade needs to contract with commercial entities in order to better serve its functions under the Austrade Act and needs to conduct itself in a manner that is consistent with commercial practices, and release of competitive pricing information to third parties might impair Austrade’s reputation as an agency that supports commercial activities;
 - (d) could reasonably be expected to harm the interests of an individual or group of individuals,
the release of competitive pricing information, without a legitimate reason for release, would give Clemenger BBDO’s competitors an advantage in future bids for government contract work and thereby harm Clemenger BBDO’s commercial interests.
- (together, the **Factors Against**).
- 29 I have determined that even if the factors for disclosure were made out, in each instance, for each exemption, the Factors Against considerably outweigh any factors for disclosure, such that release of the personal information would be contrary to the public interest and the personal information is therefore exempt.

Redactions

- 30 Section 22 of the FOI Act also allows me to provide you with edited copies of documents to remove irrelevant or exempt material. This has been utilised throughout the documents.

Decision

- 31 The Schedule to this decision letter details the documents to be released in response to the FOI Request, and whether I intend to release them partially or in full.
- 32 I am not satisfied that release of the section 47G business information and the section 47F personal information is in the public interest, and my determination is that the Factors Against outweigh the section 11B public interest factors for disclosure. I have therefore decided to release the documents with redactions to remove the information subject to the section 47G and 47F conditional exemptions.

Review rights

- 33 Under section 54 of the FOI Act, you may apply in writing to Austrade for an internal review of my decision. An internal review application must be made within 30 days of the date of this letter.
- 34 Please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.
- 35 Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:
- online: <https://forms.australia.gov.au/forms/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218 Sydney NSW 2001
- 36 You will also find useful information on the OAIC's website:
- www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.
- <http://www.oaic.gov.au/freedom-of-information/freedom-of-information-topics/topics-for-individuals/how-do-i-apply-for-an-information-commissioner-review-of-a-freedom-of-information-decision>
- 37 You can contact the OAIC on 1300 363 992.
- 38 You can contact me on foi.coordination.officer@austrade.gov.au.

Yours sincerely,

[signed and sent by email on 19 October 2020]

Geoff Budd

Manager Legal Services, Legal, Procurement and Fraud
Australian Trade and Investment Commission (Austrade)

SCHEDULE OF DOCUMENTS

Table 1: Freedom of information request – Mr John Smith

#	Description	Date	Decision on access	Reasons for decision
1	Agreement for Services for brand development and creative services for Australia's nation brand	14/12/2018	Partial	S47F – personal privacy s47G - business information S22 – out of scope
2	Work Order under Agreement for Services dated 14 December 2018	15/01/2019	Partial	S47F – personal privacy s47G - business information S22 – out of scope
3	Work Order under Agreement for Services dated 14 December 2018	15/08/2019	Partial	S47F – personal privacy s47G - business information S22 – out of scope
4	Work Order under Agreement for Services dated 14 December 2018	04/11/2019	Partial	S47F – personal privacy s47G - business information S22 – out of scope
5	Work Order under Agreement for Services dated 14 December 2018	22/01/2020	Partial	S47F – personal privacy s47G - business information S22 – out of scope