



FOI20/070

15 July 2020

Mr John Smith

By email: foi+request-6353-298b0aad@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request FOI20/070

The purpose of this letter is to give you a decision about access to information that you requested under the *Freedom of Information Act 1982* (the FOI Act).

Summary

In an email dated 21 May 2020 you requested: *a copy of the contract associated with Commonwealth tender ID CN3418114-A2, between the Attorney General's department and Julian T Brophy.*

Extension to statutory timeframe for responding to your requests

On 17 June 2020 you were advised that the period for processing your request was extended by 30 days because the department was obliged to consult with a third party under s 27A of the FOI Act. This extension of time for processing your FOI request is provided for in s 15(6) of the FOI Act.

The consultation mechanism under s 27A applies when the department believes that a person or organisation concerned may wish to contend that the requested information is exempt for reasons of personal privacy.

Information within scope of your request

I, Samantha Byng, am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

I identified a single document that falls within the scope of your request. I did this by arranging for a comprehensive search of the department's electronic documents management system and making enquiries of staff likely to be able to identify relevant documents.

Where the documents within the scope of an FOI request include the personal information of junior officers of the department or other government agencies, the department's practice is to not disclose that information (e.g. names, contact details). The names and contact details of senior officers will generally be disclosed.

Decision and reasons for decision

With regard to the information that falls within the scope of your request, I have decided to provide access subject to redactions.

As discussed above the department consulted with a third party under s 27A. They have objected to the release of certain information. The department has initiated third party rights of review and the document will be withheld until the 30 day review period has expired. The department will contact you to advise you if we have received a review request.

More information, including the reasons for my decision, is set out below.

Material taken into account

I have taken the following material into account in making my decision:

- the terms of your request;
- the content of the document that falls within the scope of your request;
- submissions made by the party consulted as part of the third party consultation;
- relevant provisions in the FOI Act, and
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines).

Section 47F- Personal information

Subsection 47F(1) provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

In considering the question of whether the disclosure of some of the information would involve the unreasonable disclosure of personal information, I have had regard to the following matters in accordance with s 47F(2) of the FOI Act:

- the extent to which the information is well known;
- whether the persons to whom the information relates are known to be associated with the matters dealt with in the document; and
- the availability of the information from publicly accessible sources.

The name of the person who signed the contract on behalf of the supplier, the name of the supplier, the supplier's abn and the supplier's postal address are all available from publicly accessible sources.

However the signature of the person who signed the contract on behalf of the supplier, contact details for an employee of the supplier, the name of the witness for the signatory and the witness's signature are not publicly available and I consider that release of this information would constitute the unreasonable disclosure of personal information. Therefore I found that this information is conditionally exempt from release under s 47F.

Section 47G- Business information

Section 47G conditionally exempts documents where disclosure 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 (business information), where the disclosure of the information:

- 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 (s 47G(1)(a)), or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth 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 (s 47G(1)(b)).

I consider that the release of the hourly rate in the contract could reasonably be expected to, unreasonably affect the supplier in respect of their lawful business as hourly rates are generally commercial in confidence. Therefore I found that information to be conditionally exempt from release under s 47G.

Public interest test

Paragraph 11A(5) of the FOI Act provides that an agency must give access to information if it is conditionally exempt at a particular time unless (in the circumstances) access to the information at that time would, on balance, be contrary to the public interest.

In assessing whether access to conditionally exempt information would, on balance, be contrary to the public interest, s 11B(3) of the FOI Act sets out four factors favouring access which must be considered, if relevant. They are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or
- allow a person to access his or her personal information.

With regard to the information that I found to be conditionally exempt under s 47F. I consider that only the first factor is relevant in this case. I accept that disclosing the conditionally exempt information may promote some of the objects of the FOI Act as information held by the Australian Government is a national resource and members of the community have a right to access Government documents. However disclosure of the information could reasonably be expected to prejudice the protection of the privacy of the individuals concerned.

Taking the above factors into consideration, I find that the public interest factors against disclosure outweigh the public interest factors for disclosure. I therefore find the relevant information is exempt from disclosure under s 47F of the FOI Act.

With regard to the information that I found to be conditionally exempt under s 47G. I consider that only the first and third factors are relevant in this case. I accept that disclosing the conditionally exempt information may promote some of the objects of the FOI Act as information held by the

Australian Government is a national resource and members of the community have a right to access Government documents. I also accept that release of the information may promote effective oversight of public expenditure. However the information is commercial in confidence and disclosing it could adversely affect the supplier's business.

Taking the above factors into consideration, I find that the public interest factors against disclosure outweigh the public interest factors for disclosure. I therefore find the relevant information is exempt from disclosure under s 47G of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under s 54 of the FOI Act, you may apply in writing to the department for an internal review of my decision.

The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email: foi@ag.gov.au
post: Freedom of Information and Parliamentary Section
Strategy and Governance Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Where possible 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.

Information Commissioner review

Under s 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.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, SYDNEY NSW 2001
in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

If you wish to discuss this decision, please contact the department's FOI team on (02) 6141 6666 or by email foi@ag.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Byng', with a stylized flourish at the end.

Samantha Byng
Assistant Secretary
Royal Commissions Branch