



Administrative Appeals Tribunal

FOI ref: 2020/0068

17 August 2020

Mr John Smith

By email: foi+request-6409-3431027e@righttoknow.org.au

Dear Mr Smith,

Notice of Decision for Freedom of Information Request no. 2020/0068

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

Summary

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

You lodged 5 separate FOI requests on 18 June 2020 and 24 June 2020 for access to:

1. '*...the contract with commonwealth tender ID CN3418470-A5, between the AAT and Launch Recruitment Pty Ltd, publish date 27-Mar-2017 to 30-Jun-2017.*'
2. '*...the contract with commonwealth tender ID CN3531767, between the AAT and Launch Recruitment Pty Ltd, publish date 9-Aug-2018.*'
3. '*... the contract with commonwealth tender ID CN3552941, between ATRAC and Launch Recruitment Pty Ltd, publish date 16-Nov-2018.*' I note that this was subsequently amended to read, '*...between AAT and Launch Recruitment Pty Ltd.*'
4. '*...the contract with commonwealth tender ID CN3552946, between the AAT and Launch Recruitment Pty Ltd, publish date 16-Nov-2018.*'
5. '*... the following contracts between Launch Recruitment Pty Ltd, and the AAT. They are identifiable by the following CN IDs on AusTender;*
 - CN3650297
 - CN3606081
 - CN3591076'

On 3 July 2020, I advised that I would be combining the 5 requests into one single FOI request as permitted under section 24 of the FOI Act.

I have liaised with the AAT's procurement team in order to identify the documents relevant to your request. As a result, I have identified 4 documents which fall within the scope of your request:

- Launch Recruitment Pty Ltd – Terms of Agreement
- Purchase order under 4500000288 – CN3552941 (related to Part 3 of your request)
- Purchase order under 4500000293 – CN3552946 (related to Part 4 of your request)
- Purchase order under 4500000368 – CN3650297; CN3606081; CN3591076 (related to Part 5 of your request)

Decision

I have decided to grant **partial access** to the documents.

In making my decision, I have taken the following into account:

- the content of the documents that fall within the scope of your request;
- the FOI Act, specifically sections 22 and 47F;
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**); and
- the views of a third party consulted by the AAT under s 27 of the FOI Act.

Reasons for my decision

Purchase Orders

Section 47F of the FOI Act – Personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

In determining whether disclosure would be unreasonable, I must have regard to the following matters:

- 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 document
- the availability of the information from publicly accessible sources
- any other relevant matters

I have considered the availability of this information and the extent to which the information is well known. In this case, I find that the individuals' names and signatures contained in the Purchase Orders are not well known or publicly available.

I consider that there is a reasonable expectation that the individuals would have provided this information in confidence and would hold a reasonable expectation that their personal information would not be disseminated or further disseminated to third parties for another purpose. I also find that disclosure of this information would be an unnecessary intrusion that could cause the individuals unreasonable distress should this information be made public.

As we have not received the individuals' express consent to the release of this information, I find that our obligations under the *Privacy Act 1988* in relation to the protection of their personal privacy, should take precedent. Taking into account the nature of the information, the lack or limited extent of public availability of the information and the fact that the information has been provided to the AAT for a limited purpose, I am satisfied that this information is conditionally exempt under section 47F of the FOI Act.

I have also considered whether the other information contained in the three Purchase Orders is conditionally exempt under section 47F. These documents contain the individuals' payment amounts and position titles at a specific point in time. I have considered the availability of this information and find that this information is already available from publicly accessible sources.

In addition, I have taken into consideration the views of a third party under consultation. I have received express permission from the third party that certain information can be disclosed to a third party for the purpose of this FOI request. Therefore, disclosure would not be unreasonable.

For these reasons, I have decided that on this occasion, the information relating to the individual's payment amounts and position titles is *not* conditionally exempt under section 47F of the FOI Act.

Terms of Agreement

Section 47F of the FOI Act – Personal privacy

I have also considered the application of section 47F of the FOI Act in relation to the Terms of Agreement. As explained above, section 47F provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

The Terms of Agreement contain the names and signatures of the individuals who executed the agreement. I have found that these signatures are not well known or publicly available.

I consider that there is a reasonable expectation that the individuals would have provided this information in confidence and would hold a reasonable expectation that their personal information would not be disseminated to third parties for another purpose. I also find that disclosure of this information may enable fraud and would be an unnecessary intrusion that could cause the individual unreasonable distress should this information be made public.

For these reasons, I have decided that the names and signatures are conditionally exempt under section 47F of the FOI Act.

Public interest test

Having found that the names and signatures contained in both the Terms of Agreement and the Purchase Orders is conditionally exempt information, I have considered whether access to the information would, on balance, be contrary to the public interest having regard to the FOI Guidelines.

A relevant public interest factor I have considered which favours disclosure is the promotion of the objects of the FOI Act, through facilitating and promoting public access to information held by Government.

Relevant factors against disclosure are:

- the release of confidential information provided in relation to the recruitment of AAT employees may discourage people from engaging in the process and inhibit the attraction of qualified candidates in the future
- disclosure could prejudice the individual's right to privacy and could cause them unreasonable distress should their personal information be made public
- the release of this information would not serve a public purpose on a matter of public debate, public expenditure or otherwise

On balance, I consider that the benefit of protecting the individual's privacy must be given greater weight, particularly considering the sensitive nature of the information. I therefore find that disclosure of the information would be contrary to the public interest under section 11A(5) of the FOI Act. On this basis, I am satisfied that the personal information is exempt and I refuse access under section 47F of the FOI Act.

Section 47E(d) of the FOI Act – Certain agency operations

Section 47E(d) of the FOI Act provides that information is conditionally exempt where its disclosure could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of agency operations. The disclosure of the vendor number together with the design of the purchase order would enable a person to misrepresent themselves to the Commonwealth and request payment for services that have not been ordered or provided by them. This risk is made more likely by the release of this information over an internet website and as a result could be reasonably expected.

Changes to business practices would be required to prevent fraudulent use of the information and would have a substantial adverse effect on the agency's financial operations. Consequently, I find the information is conditionally exempt under section 47E(d) of the FOI Act.

Public interest test

I have considered whether, disclosure of the vendor numbers would be contrary to the public interest. While disclosure would provide information to the public generally, I do not consider that the vendor numbers will assist the scrutiny of government expenditure. Whereas the risk of fraud, and the cost of amending processes to avoid fraud, is contrary to the interests of the taxpayer. On balance, I consider that the public interest in

fraud avoidance and the minimisation of costs outweighs the interest in the provision of the particular vendor numbers. Consequently, I have decided the vendor numbers are exempt under 47E(d) of the FOI Act.

Edited copies of the documents have been released to you with exempt information redacted pursuant to section 22 of FOI Act.

Your review rights

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at foi@aat.gov.au.

Yours sincerely,

Skye M

Authorised FOI Officer (APS 6)

Attachments

FOI 2 – Information about reviews and complaints under the Freedom of Information Act

Terms of Agreement

Purchase Orders (X3)

Information about reviews and complaints under the Freedom of Information Act

What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review, you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au and you can contact the office on 1300 363 992 or by email at enquiries@oaic.gov.au.