



Administrative Appeals Tribunal

FOI ref: 2020/0069

28 August 2020

Mr John Smith

By Email: foi+request-6446-03c2a621@righttoknow.org.au

Dear Mr Smith,

Notice of Decision for Freedom of Information Request no. 2020/0069

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 an FOI request on 30 June 2020 for access to:

I seek the following documents under FOI;

Email chains between Marianne Evans, A/g Assistant Director of Procurement & Contracts; and Launch recruitment.

The specific email chains I am looking for, are any email chains between Marianne and Launch recruitment, in which pay rates that Launch proposed to apply to its labour hire employees were reviewed and approved by Marianne.

The email chain I am looking for is specific. Please exclude all emails that are not between Marianne and Launch for the purposes of this FOI.

If and only if such an email chain cannot be located, please include deleted or archived emails within the scope of this request.

On 30 July 2020, I wrote to you advising that the period to process your request was extended by 30 days to allow for consultation with a third party and the due date was revised to 31 August 2020 accordingly.

Search for documents

I have interpreted your request as a request for specific emails chains between Marianne Evans and Launch Recruitment Pty Ltd (Launch Recruitment) whereby Marianne Evans reviewed and approved pay rates for labour hire employees proposed by Launch Recruitment.

I have liaised with Ms Evans to identify any documents that fall within the scope of your request. A search was conducted of her inbox, including sent and deleted items.

As a result, I have identified two email chains which fall within the scope of your request:

1. Document 1 – Email chain between Ms Evans and Launch Recruitment between the dates 18 November to 19 November 2019
2. Document 2 – Email chain between Ms Evans and Launch Recruitment between the dates 20 November to 21 November 2019

Decision

I have decided to grant **partial access** to Documents 1 and 2.

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 11A, 22, 47E(d), 47F and 47G;
- 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

Section 47E(d) of the FOI Act – Operations of agencies

Section 47E(d) of the FOI Act provides that a document 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.

I have decided that the release of internal AAT contact details within these documents would affect the proper and efficient conduct of the agency's operations in a substantial way. This is because the Tribunal has systems and contact details in place for the efficient handling of contact from the public. Were members of the public to use other channels, such as the direct email addresses or phone numbers of officers that may be unchecked, their correspondence would not be handled in a timely manner. Certain reviews handled by the Tribunal are subject to strict time frames and any delay may compromise the rights of an applicant. For this reason, the contact details in the documents are conditionally exempt under section 47E(d).

Public interest test – Section 11A(5) of the FOI Act

Having found that the information is conditionally exempt, I have considered whether access to the information would, on balance, be contrary to the public interest. 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.

A relevant factor against disclosure is that individuals who use the incorrect contact details for lodgement or inquiries with the Tribunal, will experience delays in receiving a response, which can be critical to the exercise of their review rights. The need for public information to identify the most efficient contact channels outweighs the public interest in this case. I am therefore satisfied that the material is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F of the FOI Act – Personal privacy

Documents 1 and 2 contain the personal mobile number of a Launch Recruitment employee. 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 the disclosure of the document would be unreasonable, I have had 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 decided to refuse access to this information as the information is not well known or publicly available. The individual who owns this information would have a reasonable expectation that their right to personal privacy would be respected and that their personal information would not be disseminated to third parties.

Considering the nature of the information and the fact that the information was to be used for a limited purpose, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest test – Section 11A(5) of the FOI Act

As the information is conditionally exempt, I have considered whether access to the information would, on balance, be contrary to the public interest.

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. A relevant factor against disclosure is that releasing the information would prejudice the individual's right to privacy.

On balance, I consider that the benefits of protecting the individual's privacy must be given greater weight, particularly in circumstances where the personal information does not appear to be publicly available. I therefore find that disclosure of the information would be contrary to the public interest under section 11A (5) of the FOI Act.

Section 47G – Business affairs

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)).

I have reviewed Documents 1 and 2 and find that they contain information about the business, commercial and financial affairs of Launch Recruitment. This information, if disclosed, would unreasonably reveal the conduct of the business affairs of Launch Recruitment, including any previous or current contractual arrangements with their employees.

Specifically, I find that there is information contained in the email correspondence which discloses information which is not generally known to its competitors or other external parties, including:

- direct contact details of Launch Recruitment employees
- information concerning the administration and human resources management of Launch Recruitment
- information about the operation of the business
- information regarding the status of certain employees, their contractual arrangements with the company and their salaries.

I find that this information, if disclosed, could adversely affect the company and its associated personnel in respect of their lawful business affairs. The disclosure of the documents would, or could reasonably be expected to, cause serious financial and reputational damage to the business.

Furthermore, section 47G(1)(b) of the FOI Act provides that a document is conditionally exempt if it could reasonably be expected to prejudice the future supply of information to an agency for the purpose of the administration of a law of the Commonwealth or the administration of matters administered by an agency.

In this case, the business information contained in these email chains was collected for the purposes of discussions and deliberations relating to contractual agreements that the business has with the AAT. They relate to Launch Recruitment's issue of contracts to its employees providing services to the AAT. The disclosure of this information to third parties under the FOI Act may inhibit the future supply of business information to the AAT, and could discourage employees from seeking to be considered for provision of services to the AAT. It would also inhibit frank discussions needed when discussing employment contracts between the AAT and its service providers.

I am satisfied that the release of this information is conditionally exempt under sections 47G(1)(a) and 47G(1)(b) of the FOI Act.

Public interest test – Section 11A(5) of the FOI Act

Having found that the information is conditionally exempt under section 47G of the FOI Act, I must then consider whether access to the information would, on balance, be contrary to the public interest.

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, including the release of information which would inform debate on a matter of public importance.

A relevant factor against disclosure is the protection of businesses who have or have expressed interest in contractual engagements with the AAT and who provide services in the management of AAT personnel. I consider that, since this information is not widely available, the individuals and entities who own the information would have a reasonable expectation that their business affairs would be respected, and personal and organizational business information would not be disseminated to the public.

An additional factor which I have taken into consideration is the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act. The potential for information to be made public under the FOI Act that would not generally be made public may deter individuals from entering supplier arrangements with the AAT.

I consider that, at the present time, any benefit to the public in disclosing the information is outweighed by the benefit of protecting the business' lawful and professional affairs in this instance. I therefore find that, on balance, disclosure of the information is contrary to the public interest and the information is exempt under section 47G(1)(a) and 47G(1)(b) of the FOI Act.

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

Deferment of access – consultation with third parties

During the processing of your FOI request, we undertook third party consultation with persons potentially affected by the release of the documents. That third party provided submissions against disclosing certain documents to you which we have taken into consideration.

However, as I have decided to grant partial access to the documents, under section 27A(6) of the FOI Act, we must not give access to the documents unless, after all opportunities for review run out, the FOI decision to give access still stands or is confirmed. Generally, the third party has 30 days from notification of my FOI decision to seek a review of my decision. If they do not seek review, we will provide you with the documents pursuant to section 27A(6) of the 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

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.