



Administrative Appeals Tribunal

FOI ref: 2020/0069

17 November 2020

Mr John Smith

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

Dear Mr Smith

Notice of Internal Review Decision: Freedom of Information Request no. 2020/0062

The purpose of this letter is to advise you of my decision following your request for internal review under the *Freedom of Information Act 1982* (FOI Act).

Summary

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

On 30 June 2020 you made a request under the FOI Act in the following terms:

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 28 August 2020 the AAT provided you with a decision.

Pursuant to section 27A(6) of the FOI Act your access to the documents was deferred until consulted third parties, who had made submissions, had an opportunity to seek review of the decision. The documents were released to you on 13 October 2020.

On 19 October 2020 you sought internal review of the original decision as follows:

I am writing to request an internal review of Administrative Appeals Tribunal's handling of my FOI request 'Email exchange, approval of salary, Launch, Marianne Evans'.

I seek internal review of the redactions within the documents provided within this FOI request.

Internal review

The following documents were released to you:

- Document 1 - An email string of 19 November 2019
- Document 2 – An email string of 20 and 21 November 2019.

I have compared these documents with the original unredacted documents.

Document 1.

Email 19.11.19 – 12.49pm

The redactions concern the direct contact details of an employee of a business, provided for the purpose of facilitating contact with the AAT. The details were not the public contact details for that business. As any released information will be published on the internet, release of this information is likely to affect the way members of the public contact that business. The information is conditionally exempt under section 47G(1)(a).

Other redactions concern arrangements for the purchase of the services of a particular individual and relate both to the business and to the individual. The provision of personnel services is a competitive field. Release of this information could reasonably affect the organisation in respect of its lawful business. Moreover the individual mentioned would reasonably expect their employment terms to remain confidential. You do not have the authorisation of this person to request their personal information. Consequently, the information is conditionally exempt under section 47G(1)(a) and 47F.

I agree with the original decision maker that, while the release of information under the FOI Act generally promotes the public interest, on balance it is not in the public interest to breach the reasonable expectations held by a third party individual or business in respect of the confidential nature of their affairs. It follows that the information is conditionally exempt from release.

Email 19.11.19 – 12.33 pm

The redactions on this email concern arrangements for the purchase of services of an individual and relate both to the business and to the individual, except for:

- the salutation:

“Hi Frengky and Carolyn”

- the paragraph:

“I am only available until 1:00pm today if you are able to message me I will contact you as I am out of the office. Failing that I will be in contact tomorrow morning to discuss this with you both.”

Except for the above sentences, the information in the email is conditionally exempt under sections 47G(1)(a) and 47F for the same reasons as in the first email.

The direct contact details for the AAT officer are conditionally exempt under section 47E(c) for security reasons.

Email 19.11.19 - 9.55 am

The redactions concern the purchase of service arrangements for an individual and are conditionally exempt under sections 47G(1)(a) and 47F, for the reasons stated above.

The email also contains redactions relating to the direct contact details of an employee of the business which are also conditionally exempt under section 47G(1)(a) for the reasons above.

Email 18.2019 – 4.26 pm

Again this email concerns purchase of service arrangements for an individual which are conditionally exempt under sections 47G(1)(a) and 47F, for the reasons stated above.

The direct contact details of persons involved with the business are conditionally exempt under section 47G(1)(a) and the contact details of the AAT officers are conditionally exempt under section 47E(c). On balance it would be against the public interest to either breach the expectations of the business in respect of the direct contact details of its staff or to fail to meet the security requirements of the AAT.

Document 2

Email 21.11.2019 - 11.25 am

This email contains a query from the business. It is marked “Sensitive” and it is reasonable to assume that the business did not expect it to be made public. However the email is a day after the preceding emails dated 20.11.2019 and I do not think it is part of the conversation of 20.11.2019. The marking of “Sensitive” appears to be incidental because the email was attached to the earlier chain, rather than intentional in this case. I note the business asks a question of the AAT and the email does not appear to concern business affairs. Consequently, subject to allowing the third party an opportunity to seek review, I propose to release it.

Email 20.11.2019 4.52 pm

Email 20.11.2019 4.44 pm

Email 20.11.2019 12.49 pm

These three emails form a single conversation about conditions for personnel whose services were provided by the business. The emails are marked "Sensitive" and, in this case, the conversation appears to take place on a confidential basis. While some material pertains to the affairs of the business and is conditionally exempt under section 47G(1)(a), it appears to me that the conversation as a whole is exempt under section 45. This is because the parties to it expected that it was conducted in private as evidenced by the "sensitive" marking. Further, the conversation concerns personnel management and is of a nature that would usually be confidential.

Section 45 is a complete exemption and it is not necessary for me to consider the public interest test.

Decision

I have decided to vary the original decision and grant access to the salutation and end material in the email of 19.11.19 – 12.33 pm in document 1.

I have also decided to grant access to the email of 21.11.2019 -11.25 am in document 2, subject to the review rights of the consulted third party.

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

- the content of the documents that fall within scope of your request;
- the FOI Act, specifically sections 11A, 45, 47E, 47F and 47G and X;
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines); and
- the views of a third party originally consulted by the AAT under s 27 of the FOI Act.

Deferred access

As I have decided to release a document on which consultation has taken place under section 27 and a submission received, I must defer granting access to you until such time as the review rights of the third party consulted have expired.

Subject to any exercise of review rights by the third party, the additional documents will be sent to you when those rights have expired.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner

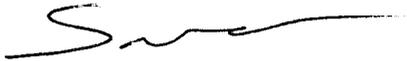
must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: [https://forms.business.gov.au/aba/oaic/foi-review-/](https://forms.business.gov.au/aba/oaic/foi-review/)
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

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

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

Yours sincerely,



Sandra Koller
Director Legal and Policy