



Administrative Appeals Tribunal

FOI ref: 2020/0082

21 August 2020

Mr John Smith

Email: foi+request-6509-cc52ae6c@righttoknow.org.au

Dear Mr Smith,

Notice of Decision for Freedom of Information Request no. 2020/0082

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 22 July 2020 for access to:

I seek a copy of the AAT's policy & procedures regarding the use of labour hire firms.

Please narrow this request to only include documents that meet this description that are, or have been available on the AAT's intranet, for use by the AAT's managerial staff when procuring labour hire services.

I have searched the AAT's intranet for documents relevant to your request. As a result, I have identified four documents which fall within the scope of your request:

1. Labour Hire and Procurement Rules (**Document 1**)
2. Engaging and managing non-APS employees guide dated March 2020 (5 pages total) (**Document 2**)
3. Process – Engaging non-APS employees (flow chart) (**Document 3**)
4. Labour hire procedural guide – AAT (**Document 4**)

Decision

I have decided to grant:

- full access to Document 3
- partial access to Documents 1, 2 and 4.

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(c), 47E(d) and 47G;
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**).

Reasons for my decision

Process – Engaging non-APS employees (flow chart) (Document 3)

This document contains material outside the scope of your request. This includes material concerning staff induction, systems access arrangements and security procedures of the Tribunal which did not relate to the use of labour hire firms. The document has otherwise been released to you in full, with the irrelevant material redacted under section 22 of the FOI Act.

Labour Hire and Procurement Rules (Document 1)

Section 47G of the FOI Act – Business operations

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)).

This document contains the name of a recruitment agency engaged by the AAT. I have decided that the disclosure of this information would adversely affect the individual's business affairs as it is reasonably likely that this information is not generally known to competitors or other external parties. This information was provided to AAT staff for the management of personnel, for instruction and guidance purposes. I find that dissemination of this information to third parties for another purpose would unreasonably affect the individual in respect of his or her lawful business, commercial or financial affairs. I therefore find that the information is conditionally exempt under section 47G(1)(a).

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 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 business information would not be disseminated to the public. 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 s 47G(1)(a).

Engaging and managing non-APS employees guide dated March 2020 (Document 2); Labour hire procedural guide – AAT (Document 4)

Material outside the scope of your request

Each of these documents contain material outside the scope of your request. This includes material concerning staff induction, systems access arrangements and security procedures of the Tribunal which did not relate to the use of labour hire firms. This material has been redacted under section 22 of the FOI Act and is marked on the documents.

Section 47E(d) of the FOI Act – Operations of agencies – Proper and efficient 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 contact details within these documents would affect the proper and efficient conduct of the agencies 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, 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 47E(c) of the FOI Act – Operations of agencies – Management of personnel

Section 47E(c) of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by an agency.

The OAIC guidelines instruct that, for this exemption to apply, the documents must relate to the management of personnel – including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety.

Where the document relates to the agency's policies and practices relating to the assessment and management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely, that:

- an effect would reasonably be expected following disclosure
- the expected effect would be both substantial and adverse.

Documents 2 and 4 relate to management of personnel for the purposes of s 47E(c) of the FOI Act. The documents contain information that reveals specific AAT internal processes relating to the procurement and assessment of personnel services. Releasing this material could reasonably be expected to have an adverse effect on the management and assessment of personnel by the AAT. Disclosing this information would reasonably be expected to affect the integrity of future processes by creating unfairness in the procurement and selection process which would, in turn, have an adverse and substantial effect on the management and assessment of personnel.

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 the disclosure of this information would prejudice the recruitment and selection processes of the AAT, by enabling providers and some candidates to access more information than others. In addition, the disclosure of these internal procedures would not add to any public debate and the benefit of

protecting the integrity and robustness of the AAT recruitment processes, outweighs the public interest in this case. I am therefore satisfied that the document is conditionally exempt under section 47E(c) of the FOI Act.

Section 47F of the FOI Act – Personal privacy

The *Engaging and managing non-APS employees guide* contains the name of an AAT 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.

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