



Internal review decision made under the *Freedom of Information Act 1982*

Decision and reason for decision of Tayla (Position Number 62213294) Information Law Section, Legal Services and Audit Branch, Department of Veterans' Affairs

Applicant: Ms Penny Imnes – Right to Know

Date of primary decision: 11 January 2021

FOI reference number (Primary): FOI 38581

Internal review decision date: 29 January 2021

Internal review reference number: IR 40120

Sent by email: foi+request-6791-f492e7a5@righttoknow.org.au

Dear Ms Imnes

Freedom of Information Request: FOI IR 40120

Decision

1. The purpose of this letter is to give you a decision about your request for Internal Review under the *Freedom of Information Act 1982 (FOI Act)*.
2. I have made a decision to affirm the original decision made by Jess (Position Number 62227602), Information Access Officer, Information Law Section. That decision granted you access in part to four (4) documents. The documents that fell within the scope of your request were subject to exemptions made under section 47 of the FOI Act. Further deletions were also made to the irrelevant material captured in the documents under s22 of the FOI Act.
3. The documents that I have chosen to grant access in part are set out in **Schedule 1**. Where I have decided to grant access in part, I have provided access to an edited copy of the documents, modified by deletions in accordance with section 22(2) of the FOI Act.

Authority to make this decision

- I, Tayla (Position Number 62213294), Information Access Officer, Information Law Section, am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Summary

- On 12 October 2020, you made a request for access to documents in the possession of the Department. Your request sought access to:

'May I please access the current Labour Hire Contract in place between DVA (WA office) and Adecco Group.

May I please access the current Labour Hire Contract in place between DVA (WA office) and Hudson.

May I please view the V2 funding arrangement, specifically in relation to the hiring of V2 classified staff in the Perth DVA office during 2020.

May I please access the number of Labour Hire staff working specifically for - "Perth DRCA PI team" or "perth PI - DRCA processing team" on the following dates:

01/03/2019

01/06/2019

01/10/2019

01/11/2019

01/01/2020

01/03/2020

01/10/2020

01/11/2020 (or day of request processing)

May I please have access to the costs of labour hire staff in the Perth DVA office for September 2020.

A list of projects and dates of commencement and completion which required the need for labour hire workforce within the WA DVA office.

Any other reason/justification for the need to utilise labour hire staff in the Perth

Office and the number used from 01/01/2020 to present.'

6. On 27 October 2020, we contacted you to inform you that the Department was considering consulting with you under s24AB, and to seek confirmation that you were the applicant for both FOI 38581 and FOI 38604.
7. You responded on 27 October 2020 confirming that the two requests could be processed together in one (1) request.
8. On 29 October 2020, the Department issued you with a request consultation notice (the notice) under section 24AB of the FOI Act. The notice offered you the opportunity to revise the scope of your request, noting that:
 - Requests 38581 and 38604 had been combined under reference FOI 38581;
 - Your request did not provide enough information to enable the Department to identify the documents you were requesting; and
 - Processing your request was likely to result in a substantial and unreasonable diversion of the Department's resources.
9. On 29 October 2020 you responded to the notice revising the scope of your request to the following:

"..1. A copy of the contracts in relation to the Contract Number's CN3689970 and CN3685665 between the Department of Veterans' Affairs and Adecco Australia Pty Ltd.

2. A copy of the contract in relation to Contract Number CN3685667 between the Department of Veterans' Affairs and Hudson Global Resources (Aust) Pty Ltd

3. E-mails between the acting assistant director, Rose Wainright, and Adecco Australia Pty Ltd from the 18 May 2020 to present.

4. E-mails between the APS 6 Team Leader, Kym Wong, and Adecco Australia Pty Ltd from the 18 May 2020 to present.'
10. On 9 November 2020, the Department contacted you to advise that documents had been identified in relation to points 3 and 4 of your request, and that the business area required additional time to identify documents relevant to points 1 and 2 of your request. The Department sought an extension of time of 30 days under s15AA of the FOI Act.

11. As a response was not provided by you, on 10 November 2020 the Department sought a 30 day extension of time from the Office of the Australian Information Commissioner (**OAIC**) under section 15AB of the FOI Act. On 17 November 2020, the OAIC approved the extension of time and a decision on your request was then due on 11 December 2020.
12. On 10 November 2020, you requested access to the documents for points 3 and 4 of your request while awaiting the documents for points 1 and 2 of your request. The Department responded to you on 10 December 2020 advising that your request would be considered and a further response would be provided in due course.
13. On 17 November 2020, the Department contacted you to advise that documents had been identified in relation to all four (4) points of your request. The Department further advised that as a result of the contents of the documents, it would be necessary to undertake third party consultations in accordance with section 27A of the FOI Act.
14. Prior to undertaking the third party consultations, the Department sought your agreement to further revise the scope of your request to remove the personal information of third parties and Departmental staff.
15. On 17 November 2020, you replied to the Department's request and advised the following:

"I agree to take out personal information in regards to names, contact details, addresses and signatures of individual parties and from the documents.

The contract's I requested have no confidentiality issues per Austender.

I would expect for entity/company details and company roles to be visible."
16. The Department responded to your email on 30 November 2020 confirming that the scope of your request was now as follows:

"...1. A copy of the contracts in relation to the Contract Number's CN3689970 and CN3685665 between the Department of Veterans' Affairs and Adecco Australia Pty Ltd.

2. A copy of the contract in relation to Contract Number CN3685667 between the Department of Veterans' Affairs and Hudson Global Resources (Aust) Pty Ltd

3. E-mails between the acting assistant director, [staff member], and Adecco Australia Pty Ltd from the 18 May 2020 to present.

4. E-mails between the APS 6 Team Leader, [staff member], and Adecco Australia Pty Ltd from the 18 May 2020 to present

Excluding:

The Personal Information of third-parties and Departmental staff members..."

17. The Department's email of 30 November 2020 also formally confirmed that third party consultations would need to be undertaken under s27 of the FOI Act. Accordingly, an extension of time was applied and a decision on your request was due on 11 January 2021.
18. On 4 December 2020, the Department contacted you to seek confirmation that points 3 and 4 of your request sought access to materials in relation to the contracts mentioned in points 1 and 2 of your request only, rather than Department-wide correspondence between the named parties. The Department framed this query in the following terms:

"...in relation to points 3 and 4 of your request... you would like the emails between [staff members] and Adecco that are in relation to the contract numbers CN3689970, CN3685665 and CN3685667 only."
19. The Department did not receive a response from you, and a further email was sent to you on 9 December 2020 advising that if we did not hear back from you by close of business 10 December 2020, we would proceed on the following understanding of the scope:

"you would like the emails between [staff members] and Adecco that are in relation to the contract numbers CN3689970, CN3685665 and CN3685667 only."
20. The Department had not received a response from you by close of business 10 December 2020, and therefore proceeded with its understanding of the scope as outlined above in point 19.
21. On 22 December 2020, you responded to the Department confirming that this understanding of the scope was correct. You also asked whether it would be possible to receive any of the material identified in response to your request early.
22. The Department responded to you on 23 December 2020 explaining that it would not be possible to bring forward the decision date for your matter, which was 11 January 2021. The Department provided the following explanation:

'As the Department will shortly enter a Shutdown period (25 December 2020 to 1 January 2021 inclusive), we are required to prioritise matters that have a deadline falling within this

calendar year.

For this reason, we are not in a position to provide the documents to you just yet.'

23. In response to the third party consultations, one (1) third party raised objections and the views of the third party were taken into account when the original decision was made.
24. Extensions of time were applied to process your request in accordance with section 15(6) and 15AB of the FOI Act. Further, the clock was temporarily stopped as a result of the 24AB consultation process; as you responded on the same day, the clock was only stopped for one day for the 24AB consultation. A decision on your request was therefore due on 11 January 2020.
25. The original decision maker decided not to impose a charge in relation to this request, in accordance with Regulation 8 of the *Freedom of Information (Charges) Regulations 2019*.
26. On 11 January 2021, you were provided with a decision relating to access to documents within scope of your request. The four (4) documents which fell within the scope of your request and subsequently provided to you, were released in part.
27. Material within the documents were found to be conditionally exempt from release under s47 of the FOI Act, and further deletions of irrelevant materials were made under s22 of the FOI Act.
28. On 11 January 2021, you requested an Internal Review of the primary decision. In your request, you specifically noted:

"...I object to the decision to withhold Documents disclosing trade secrets or commercially valuable information (section 47)..."

29. As no extensions of time have been applied to process this Internal Review, a decision on your request is due by 10 February 2021.

Material taken into account

30. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to affirm the original decision and grant partial access to the documents follows.
 - the terms of your request and your revised request following consultation with the Department;

- the terms of your request for an Internal Review;
- the types of information and documents that are in the Department's possession;
- the content of the document that fall within the scope of your request;
- Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth. I also considered the following provisions of the FOI Act relevant to my decision:
 - Section 11B Public interest exemption – factors
 - Section 15 Request for Access
 - Section 22 Access to edited copies with exempt or irrelevant material deleted
 - Section 47 Documents disclosing trade secrets or commercially valuable information
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**);
- the decision of FOI 38581; and
- the views of the third party consulted by the Department under section 27 of the FOI Act.

31. A full extract of all FOI Act provisions used to make my decision are provided in **Schedule 2**.

Reasons for decision

32. I have decided to affirm the original decision and grant partial access to the documents within the scope of your request, subject to the following exemptions in accordance with the FOI Act:

Documents disclosing trade secrets or commercially valuable information (section 47)

33. Section 47 of the FOI Act provides that a document is an exempt document if its disclosure would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

34. Documents 2, 3 and 4 of the original decision, contain material relating to the commercial affairs of third parties. Specifically the information relates to the hourly rates of the companies party to the relevant contracts.

35. In undertaking this internal review, I have reviewed the material and have considered the views of the third parties consulted under section 27 of the FOI Act, and I have decided that the material is commercially valuable. Furthermore, I have decided that the disclosure of this information would or could reasonably be expected to destroy or diminish its value.

36. I agree with the original decision that the hourly rates of companies are not publically available and are not known to you, and therefore if released, may provide a commercial advantage to the competitors of the relevant company.

37. As section 47 of the FOI Act is not a conditional exemption, I am not required to consider a public interest test.

Delete exempt or irrelevant material from documents and provide access to edited copies (section 22)

38. The Department may refuse access to a document on the grounds that it is exempt. If so, the Department must consider whether it would be reasonably practicable to prepare an edited copy of the document for release, that is, a copy with relevant deletions made under section 22 of the FOI Act. The Department is under the same obligation to consider preparing an edited copy of a document by removing information that would reasonably be regarded as irrelevant to the request.

39. As explained above, some of the documents subject to your request contain exempt information. On this basis, I have prepared the documents for release by removing that

exempt material in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

40. Some of the documents also contain irrelevant information. This information had been deemed irrelevant to the scope of your request because on 17 December 2020, you revised the scope of your request to exclude the personal information of third-parties and Departmental staff members.
41. I agree with the original decision made and the subsequent document prepared by the Department in response to your original FIO request. As such, I affirm the original decision that removed any material falling outside of the scope of your request in accordance with section 22 of the FOI Act. The material that has been edited for release is marked within the documents as well as at **Schedule 1**.

Access to documents

42. As I am affirming the original decision, I have not provided you with an additional copy of the documents. Please do not hesitate to contact the Department should you require an additional copy of the documents previously released to you.

Information Publication Scheme

43. The Information Publication Scheme requires the Department to publish information released in response to individual requests made under the FOI Act, except in specified circumstances.
44. I am of the view that details of your request should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log which can be accessed at <http://www.dva.gov.au/about-dva/freedom-information/foi-disclosure-log>. Please note that the Department does not publish details of FOI applicants, it only publishes details of the FOI request and the documents released in response to the request.

Your rights of review

45. Under section 54L of the FOI Act, you may apply to the Office of the Australian Information Commissioner (**OAIC**) to review my decision. An application for review by OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001

Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street, Sydney NSW 2000

46. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

47. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: Information.Law@dva.gov.au

Yours sincerely,

Tayla (Position Number 62213294)

Information Access Officer

Information Law Section

Legal Services and Audit Branch

29 January 2021



Schedule of documents

Applicant: Ms Penny Imnes – Right to Know

Decision date: 29 January 2021

FOI reference number: FOI 40120

Document reference	Date of document	Document description	Page number	Decision	Exemption provision
1	21/10/2020	Email between Adecco and the Department	1	Part Access	s22
2	15/5/2020	Work Order between DVA and Adecco – SON3557594	2-7	Part Access	s22 and s47
3	11/6/2020	Work Order between DVA and Adecco - SON3557594	8-13	Part Access	s22 and s47
4	15/5/2020	Work order between DVA and Hudson - SON3557594	14-19	Part Access	s22 and s47



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.
Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:
 - (a) section 12 (documents otherwise available);
 - (b) section 13 (documents in national institutions);
 - (c) section 15A (personnel records);
 - (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions — factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

15 Requests for access (as related to the requirements for requests)

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

Requirements for request

- (2) The request must:
 - (a) be in writing; and
 - (aa) state that the request is an application for the purposes of this Act; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
 - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
 - (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
 - (b) postage by pre-paid post to an address mentioned in paragraph (a);
 - (c) sending by electronic communication to an electronic address specified by the agency or Minister.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and

- (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
 - (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;
 - (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document. (see section 11A).

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

- (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.