Australian Government
Department of Industry, Science, Energy and Resources

Our ref: 67672

Ange Greg
Right to Know

By email: foi+request-6948-e21a5623@righttoknow.org.au

Dear Ange

***Freedom of Information Act 1982* – Notice of Decision**

I refer to your correspondence, received by the Department of Industry, Science, Energy and Resources (**the department**) on 4 December 2020 for access under the *Freedom of Information Act 1982* (**FOI Act**) as follows:

> *"the tender submission inclusive of the resume as provided by Daniel Smith for the purpose of applying for this contract: https://www.tenders.gov.au/Cn/Show/8cb79da9-eae6-aee9-9b21-6d078b8b7d37".*

Background

On 5 January 2021, you were notified that in accordance with section 15(6) of the FOI Act the time limit for the processing of your request was extended by 30 days to allow for third party consultation.

Decision

I am an authorised decision maker under section 23 of the FOI Act.

On the outset, I have decided not to impose any charges for the processing of your request.

I am satisfied that all reasonable searches have been undertaken for documents relevant to your request. I am advised that the department has in its possession one document that is relevant to your request. This document is described in the Schedule of Documents at **Attachment A.**

I have decided to grant access to the document in part. I have found that the requested document contains material which is exempt under:

- section 47F(1) of the FOI Act, as disclosure of the information would be an unreasonable disclosure of an individual's personal information; and
- section 47G of the FOI Act, as disclosure of the information would be an unreasonable disclosure of business information relating to an organisation or undertaking.

The reasons for my decision are set out below, as required by section 26 of the FOI Act, in Part A of the Annexure.

If you are dissatisfied with my decision, your review rights are set out in Part B of the Annexure.

Yours sincerely

Claire Forsyth
General Manager
Business Outreach and Engagement
29 January 2021

Enclosures
Annexure (Part A – Statement of Reasons and Part B – Review Rights)
Attachment A – Schedule of Documents

Annexure
Part A – Reasons for Decision (section 26 FOI Act)
Request: Ange Greg – 4 December 2020 (LEX 67672)
Decision Maker: Claire Forsyth, General Manager, Business Outreach & Engagement

1. Evidence/Material on which my findings were based

1.1 In reaching my decision, I relied on the following information and documentary evidence:

- the FOI Act;
- the contents of the documents described in Attachment A;
- consultation with departmental officers as to the nature of the documents;
- consultation with affected third parties as to the nature of the documents; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

2. Section 22 – Deletion of irrelevant material

2.1 Under section 22 of the FOI Act, the department may delete material from documents that it considers irrelevant to the scope of your request.

2.2 As per our correspondence of 10 December 2020, the department considers the names and contact details of APS staff below the SES level to be irrelevant unless informed otherwise. Accordingly, this information has been deleted under section 22 of the FOI Act.

3. Section 47F – Personal Information

3.1 Subsection 47F(1) of the FOI Act provides that:

> *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

3.2 The term, 'personal information', is defined in section 4 of the FOI Act to mean:

> *information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

3.3 When determining whether the disclosure of personal information would be unreasonable, subsection 47F(2) of the FOI Act requires me to consider:

(a) the extent to which the information is well known;
(b) 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;
(c) the availability of the information from publicly accessible sources; and
(d) any other matters that I consider relevant.

3.4 I have decided that certain material contained in the document identified in the Schedule of Documents is conditionally exempt under subsection 47F(1)of the FOI Act.

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3.5 The information which I have determined would be unreasonable to disclose comprises personal information about the tenderer and other third party individuals, including identifying information, contact information, qualifications, work history, and information and options about skills and experience. This personal information is not well known or publicly available, and the individuals to which part of the information relates are not known to be (or to have been) associated with the matters contained in the document. I also do not consider that any public purpose would be achieved through the release of the personal information of these third parties.

3.6 Under subsection 11A(5) of the FOI Act, the department must give you access to this conditionally exempt material unless in the circumstances it would be, on balance, contrary to the public interest to do so. Subsection 11A(5) of the FOI Act sets out the following factors favouring access to a document:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person access to his or her own personal information.

3.7 I have considered each of the factors favouring access listed above. I do not consider that disclosure of the personal information in question would go towards promoting the objects of the FOI Act, as the FOI Act recognises the need to protect unreasonable intrusions on the privacy of individuals. Nor do I consider that disclosure would materially inform debate on a matter of public importance, or promote effective oversight of public expenditure. As the personal information relates to third parties and not yourself, the fourth public interest factor is not relevant.

3.8 I have taken into account the extent to which disclosure would prejudice the individuals' personal privacy, and also consider that the release of personal information could cause stress to the persons to whom the information relates.

3.9 Further, I have considered the previous effects of releasing information about Regional Incubator Facilitators (**RIFs**) in response to similar FOI requests. In particular, I am mindful that those releases has resulted in RIFs being directly contacted on their personal phone numbers and being targeted by public campaigns. It is reasonably foreseeable that such harm will continue to occur if I were to release the personal information of the RIF named in this FOI request.

3.10 Following consideration of these factors, I have decided that in the circumstances of this particular matter, the public interest in disclosing the personal information is outweighed by the public interest against disclosure.

3.11 Therefore, I am satisfied that certain material in the document is of such a nature that it is conditionally exempt under subsection 47F(1) of the FOI Act. Furthermore, I have decided that on balance it would be contrary to the public interest to release this information. Accordingly, I have deleted the exempt material in the document and have decided to release the remaining material in accordance with subsection 22(1) of the FOI Act.

4. Section 47G – Business Information

4.1 Section 47G(1) of the FOI Act provides that:

> *A document is conditionally exempt if its disclosure under the FOI Act would disclose information concerning a person in respect of his or her business or professional affairs or*

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concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that 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; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth ...."

4.2 In addition to being personal information, certain material contained in the document concerns the tenderer's business and professional affairs. I am satisfied that disclosure of the information would, or could reasonably be expected to, unreasonably adversely affect the tenderer in respect of his lawful business or professional affairs. The relevant material addresses the tenderer's response to the selection criteria, including his proposed approach to the delivery of services, and relevant experience and skills to meet the requirements. The FOI Act does not restrict the use or further dissemination of released material. If the information were to become more widely known, it could be used by third parties in similar competitive tendering or recruitment processes, to the possible business, professional and financial detriment of this particular tenderer.

4.3 Accordingly, I am satisfied that certain material contained in the document is conditionally exempt under section 47G(1) of the FOI Act.

4.4 Subsection 11A(5) of the FOI Act requires that access to a conditionally exempt document, including a document that is conditionally exempt under section 47G must be given to the applicant unless disclosure of the document would, on balance, be contrary to the public interest. I have considered section 11B of the FOI Act and Part 6 of the FOI Guidelines when applying the public interest test.

4.5 In weighing up the public interest factors both in favour and against disclosure, I have considered the factors favouring access set out in subsection 11B(3) of the FOI Act and the further factors and guidance material set out in the FOI Guidelines. I have therefore considered the following factors which may favour disclosure, including the extent to which disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- assist in the effective scrutiny of government decisions; and
- promote effective oversight of public expenditure.

4.6 While I consider that disclosure may promote the objects of the FOI Act and have some relevance to matters affecting oversight of public expenditure (insofar as it might provide some insight into the basis upon which the tenderer was selected), I do not consider that disclosure of the business information would inform debate on a matter of significant public importance. I consider that the public interest factors in favour of disclosure are outweighed by the public interest factors against disclosure, namely that:

- the information is not well known and is not available from publicly-accessible resources;
- no public purpose would be achieved through the release of the business information of these people or organisations; and
- disclosure of this information would reasonably be expected to unreasonably affect a person or organisation in respect of their lawful business affairs;
- if the information were to become more widely known and used by others to frame their responses in similar tender processes, this would prejudice the integrity of such processes.

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4.7 Having considered the strengths of the public interest factors for and against disclosure, I am of the view that, on balance, the public interest factors against disclosing the material in the document outweighs those in favour of disclosure.

4.8 Therefore, I have decided that the relevant material contained in the document is conditionally exempt from disclosure under section 47G(1) of the FOI Act, and that disclosure would be contrary to the public interest. As noted above, I have deleted the exempt material in the document, and decided to release the remaining material to you in accordance with subsection 22(1) of the FOI Act.

5. Publication

5.1 Section 11C of the FOI Act requires agencies to publish documents released through an FOI request on our website within 10 days of release, except in certain circumstances including when the documents contain personal or business information that would be unreasonable to publish.

5.2 The document being released to you contains personal and business information that would be unreasonable to publish. As a result, a redacted copy of the document will be published on our disclosure log within 10 days of it being released to you.

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Part B – Review Rights

Application for Internal Review

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator
Department of Industry, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

or by e-mail to: FOI@industry.gov.au.

Review by the Australian Information Commissioner

If any decision on internal review were not satisfactory to you, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at www.oaic.gov.au.

ATTACHMENT A

Request for Access under the *Freedom of Information Act 1982* (Cth)
Department of Industry, Science, Energy and Resources
FOI Applicant: Ange Greg
SCHEDULE OF DOCUMENTS

Doc No	Description of document	Pages	Decision	Reasons
1.	Tenderer response documents	27	Exempt in part	Removed personal information under section 47F(1) and business information under section 47G.

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