

FOI-2022-10022

31 March 2022

Cynthia

By email to: [foi+request-8345-4068fc32@righttoknow.org.au](mailto:foi+request-8345-4068fc32@righttoknow.org.au)

Dear Cynthia

### **Freedom of Information request – access decision**

I refer to your request received on 7 February 2022 for access to documents held by the Office of the Commonwealth Ombudsman (the Office) under the *Freedom of Information Act 1982* (the FOI Act).

I sincerely apologise for the delay in providing this decision.

#### **Decision and reasons**

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

I have decided to:

- grant access in part to 3 documents;
- refuse access to parts of documents 1-3 under s 47F of the FOI Act;
- refuse access in full to documents 4-41 under s 47G(1)(a) of the FOI Act.

In making my decision I had regard to the terms of your request, the contents of the requested documents, submissions from a third party, relevant provisions of the FOI Act, and Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act<sup>1</sup> (the FOI Guidelines).

A schedule of documents is available below at **Attachment A**.

Information about your complaint and review rights is at **Attachment B**.

#### **FOI request**

In your request dated 7 February 2022 you requested access to the following:

*“...I’ve come across another interesting contract notice on the AusTender website.*

*The contract notice number is CN3754388. The description for the contract is “Contractor EL1 equivalent in the role of Assistant Director”. The supplier of the services is Capital Recruit Operating Account. The value of the contract is \$156,000. The contract period is 11 February 2021 to 30 October 2021.*

- a) the written document (or documents) setting out the contract associated with CN3754388, so that I can determine what services were provided by the supplier;*
- b) any purchase orders associated with CN3754388;*
- c) any invoices issued by the supplier with respect to CN3754388;*

---

<sup>1</sup> <https://www.oaic.gov.au/freedom-of-information/foi-guidelines>.

- d) any and all documents setting out the scope of the role of this contractor (including what duties they had to perform, performance indicators etc.);
- e) the APS role evaluation summary record (the template of this summary record can be found on pages 3 – 5 of the “Australian Public Service Role evaluation tool”, which is available for download at <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/aps-role-evaluation-guidance-and-tool> for the “equivalent” Executive Level 1 Assistant Director role that was the comparative basis of the contractor’s role; and
- f) to the extent that it is not covered by (d) and (e), any and all documents setting out the ‘research’ (e.g. interviews with other staff, analysis of similar roles in other agencies, analysis of going market rates in relation to the work to be performed by the contractor etc.) undertaken by OCO staff to determine the proper scope of the role of the contractor.

### **Third party consultation**

During the processing of your request, we consulted a third party that would potentially be affected by the release of the documents falling within the scope of your request and that third party has made a submission in support of an exemption contention.

For this reason, the processing time in respect of your request was extended by 30 days.

### **Steps taken to locate documents**

To locate the requested documents, I have searched our electronic file management system using the information provided in your request (contract notice reference numbers) and consulted with relevant internal staff to retrieve records. I am satisfied that this search was appropriate and all documents relevant to your request have been identified where possible.

I identified 41 documents within the scope of your request.

### **Public Interest Conditional Exemption – business – Section 47G of the FOI Act**

I have decided to refuse access to material comprising the rates, fees and tax invoices (‘pricing information’) in respect of a contract of service between this Office and Capital Recruit Pty Ltd under s 47G(1)(a) of the FOI Act.

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 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

The FOI Guidelines explain that the business information exemption is intended to protect the interests of third parties dealing with the Government. The operation of s 47G depends on the effect of disclosure rather than the precise nature of the information itself<sup>2</sup>.

### **Business information**

I am satisfied that the pricing information in the documents relates to the money-making affairs of the supplier as opposed to its private or internal affairs. As the material directly relates to the services provided as part of a commercial transaction I consider the information is business information for the purpose of s 47G of the FOI Act.

### **Disclosure would unreasonably affect business, commercial or financial affairs**

In deciding whether disclosure of a document containing business information would be

---

<sup>2</sup> FOI Guidelines, [6.184] – [6.185].

unreasonable for the purpose of s 47G(1)(a), a decision maker must balance the public interest and the private interests of the business.

I consider that as the pricing information relates to the expenditure of public funds by this Office there is a moderate public interest in ensuring the Office is appropriately procuring services in accordance with government policy.

However, I consider that release of the information would reveal limited additional information about the expenditure of public funds noting that certain information about the total value of the contract is already publicly available on the Austender website<sup>3</sup>.

Based on my examination of the pricing information, disclosure of this material could be used to calculate or determine the pricing structure of the suppliers' services. Having regard to the market in which the supplier operates (the provision of labour-hire services), disclosure of such information is reasonably likely to impact on the ability of the supplier to compete against other suppliers (for example, disadvantage the supplier in a competitive negotiation or tender process).

On balance, as the pricing information is not otherwise publicly available and considering the detrimental effect disclosure would have on the supplier, disclosure would be unreasonable in these circumstances.

For these reasons, the pricing information is conditionally exempt under s 47G(1)(a) of the FOI Act.

#### **Disclosure not in the public interest**

Subsection 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

I have identified one factor favouring disclosure in the public interest, where disclosure would promote effective oversight of public expenditure. However, as discussed above I have afforded little weight to this factor as the total value of the contract is already publicly available.

I do not consider disclosure would inform debate on a matter of public importance, reveal information about the operations of this Office, or allow access to personal information.

I have considered that disclosure could reasonably be expected to harm the financial and business affairs of the supplier. I have afforded moderate weight to this factor having regard to the submissions of the supplier and my examination of the pricing information. In my view, disclosure would significantly impact on the profitability of a private business.

On balance, I am satisfied that disclosure of the pricing information would be contrary to the public interest and I have exempted the relevant information from disclosure under s 47G of the FOI Act on this basis.

#### **Public Interest Conditional Exemption – Personal privacy – Section 47F of the FOI Act**

I have decided to refuse access to the full names, direct contact details and signatures of third parties; and the direct contact details, surnames, and signatures of staff in this Office under s 47F of the FOI Act.

Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about a person.

#### ***Personal information***

Section 4(1) of the FOI Act provides that 'personal information' has the same meaning as in the *Privacy Act 1988* (the Privacy Act). Section 6(1) of the Privacy Act provides:

---

<sup>3</sup> <https://www.tenders.gov.au/Cn/Show/9b628080-7fb8-4f66-9652-155ad26218d8>.

*'personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

- (a) *whether the information or opinion is true or not; and*
- (b) *whether the information or opinion is recorded in a material form or not'*

The identity of the relevant individuals is reasonably ascertainable from the inclusion of their full names, contact details and their signatures. I am therefore satisfied that the relevant information constitutes personal information under the definition set out in section 4 of the FOI Act.

***Disclosure unreasonable***

If information is personal information, it will be conditionally exempt if its disclosure would be 'unreasonable'. In considering whether disclosure would be unreasonable, subsection 47F(2) of the FOI Act requires me to take into account:

- 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 matters that I consider relevant.

The FOI Guidelines set out further information to which decision makers must have regard to when determining whether disclosure would be unreasonable, including<sup>4</sup>:

- the nature, age, and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.

As per the factors set out in the Guidelines, and s 47F of the FOI Act, I have turned my mind to whether disclosure would be unreasonable in this particular case.

In respect of the personal information of third parties I have considered the following:

- disclosure is not likely to advance the public interest in government and transparency, particularly noting relevant details about the contract are publicly available on Austender
- the relevant documents are less than 2 years old, and I believe the personal information remains current and accurate
- as the documents relate to a contract for services between the supplier and this Office, the personal information of third parties is not well known or otherwise publicly available

Having regard to these factors, I consider release of the personal information of third parties would be unreasonable in the circumstances.

---

<sup>4</sup> FOI Guidelines, [6.143].

In respect of the personal information of staff in this Office I have considered the following:

- the information is included on documentation for the purpose of a commercial arrangement and for this reason the information is not well known or otherwise publicly available
- the information remains current and accurate
- this Office has a live duty of care to protect the health and wellbeing of staff in this Office, including by addressing the risk of unsolicited contact or harassment as a result of obtaining direct contact details of staff

Having regard to these factors, I consider release of the personal information of staff in this Office would be unreasonable in the circumstances.

**Disclosure not in the public interest**

Disclosure of the personal information included in the documents would reveal very limited information about the operations of this Office and would not contribute to the oversight of public expenditure.

In my opinion, the public interest is best served by withholding this information on the ground that release of this information could reasonably be expected to prejudice the protection of a person's right to safety and privacy.

Pursuant to subsection 11A(5) of the FOI Act, I have concluded that the relevant material is not required to be disclosed because disclosure at this time would be, on balance, contrary to the public interest.

Yours Sincerely,



Caitlin Christie  
Paralegal  
Legal Team

*Influencing systemic improvement in public administration*

**Attachment A – Schedule of documents**

**Freedom of Information Request FOI-2022-10022**

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption
1.	10 February 2021	5	Request for approval to engage a contractor under a labour-hire arrangement	<i>Partial Access</i>	Section 47F – personal privacy (Ombudsman staff surnames, direct email and direct phone number)
2.	11 February 2021	6	Work Order – Assistant Director - Finance team	<i>Partial Access</i>	* Section 47G(1)(a)– commercially valuable information (pricing information) Section 47F – personal privacy (Ombudsman staff surnames, direct email and direct phone number; Capital Recruit staff names, signature, direct email, phone number)
3.	11 February 2021	1	Contractor and Position Information Form	<i>Partial Access</i>	Section 47F – personal privacy (third party full name, email address, mobile number; Ombudsman staff surname)
4.	3 March 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
5.	3 November 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
6.	2 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)

### Freedom of Information Request FOI-2022-10022

<b>Doc No.</b>	<b>Date</b>	<b>Pages</b>	<b>Description of Document</b>	<b>Decision on access</b>	<b>Exemption</b>
7.	1 September 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
8.	31 March 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
9.	29 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
10.	29 September 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
11.	28 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
12.	28 April 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
13.	27 October 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
14.	24 February 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
15.	26 May 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
16.	25 August 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)

### Freedom of Information Request FOI-2022-10022

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption
17.	24 March 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
18.	22 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
19.	22 September 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
20.	21 July 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
21.	21 April 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
22.	20 October 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
23.	19 May 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
24.	18 August 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
25.	17 March 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
26.	16 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)



### Freedom of Information Request FOI-2022-10022

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption
27.	15 September 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
28.	14 July 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
29.	14 April 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
30.	13 October 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
31.	12 May 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
32.	11 August 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
33.	10 March 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
34.	9 June 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
35.	8 September 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
36.	7 July 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)

### Freedom of Information Request FOI-2022-10022

Doc No.	Date	Pages	Description of Document	Decision on access	Exemption
37.	7 April 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
38.	6 October 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
39.	5 May 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
40.	3 November 2021	1	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)
41.	4 August 2021	2	Invoice	<i>Exempt in full</i>	* Section 47G(1)(a)– commercially valuable information (pricing information)