

Our ref: FOI-2022-50003

20 May 2022

D

Emailed to: [foi+request-8455-1bfe66e7@righttoknow.org.au](mailto:foi+request-8455-1bfe66e7@righttoknow.org.au)

Dear Anonymous

**Freedom of Information request – Internal Review decision**

I am writing to advise you of my decision following your request for internal review of Gregory Parkhurst's decision to refuse access to documents you requested under the Freedom of Information Act 1982 (FOI Act).

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

**Summary**

Your FOI request dated 27 February 2022, was expressed in the following terms:

- a) any and all contract notices prepared pursuant to procurement arrangements for the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman", including contract notifications prepared for publication on the AusTender website; and
- b) any and all tender notices prepared pursuant to procurement arrangements for the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman", including tender notifications prepared for publication on the AusTender website; and
- c) any and all approaches to market pursuant to procurement arrangements for the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman"; and
- d) any purchase orders associated with the contract notice for the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman"; and
- e) any invoices issued by the supplier in relation to the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman"; and
- f) any and all "request documentation", as that term is defined in the Commonwealth Procurement Rules, associated with the "computer system [developed] ... for the purpose of managing complaint and investigation work performed by the Commonwealth Ombudsman".

You were advised on 19 April 2022 of the decision.

Mr Parkhurst identified a total of 95 documents within the scope of your request. In his decision letter he notified you that he had exempted all 95 documents in full from disclosure.

#### **Request for internal review**

On 19 April 2022, our Office received your request for internal review of Mr Parkhurst's decision under s 54B of the FOI Act. You stated that:

'... The last time I provided reasons for internal review, my request was ignored.  
I do not intend to invest time in reasons only to be ignored again.  
Suffice it to say that I disagree with your reasons for decision and believe that the decision is wrong...'

#### **Decision summary**

In reviewing our earlier decision, I identified no further documents which fall within the scope of your review request.

My decision is to affirm the primary decision dated 19 April 2022. My reasons for this decision are outlined below in this letter.

#### **Material taken into account**

I have taken the following material into account in making my review decision:

- The scope of your FOI request (including any revision of that request).
- The content of the documents that fall within the scope of your request.
- The FOI Act.
- The Guidelines issued by the Office of Australian Information Commissioner under s 93A of the FOI Act.

#### **Decision and Reasons**

I have reviewed the primary decision, the relevant documents and considered all of the relevant provisions of the FOI Act, to reach an internal review decision pursuant to s 54C of the FOI Act.

As a result of my review, I have reached a decision to affirm the primary decision.

I have reached this view because of the following reasons:

- Your original request was worded 'any documents held by the Office of the Commonwealth Ombudsman that set out how it is that positions/roles in the Office may be classified over more than one classification depending on the complexity of the group of duties performed, **and** [emphasis added] where one of those classifications is an SES classification'.
- Mr Parkhurst took a broad interpretation of your original request, and provided material that related 'how it is that positions/roles in the Office may be classified over more than one classification depending on the complexity of the group of duties performed'. In doing so, he did not limit the scope of your request to documents of that type that referred or related to SES classifications.

- The s 22 Exemption Documents are described in the attached schedule and include internal Office correspondence and Memos relating to the administration and financial accounting of this computer system. There are also emails exchanged between the Office and a third party regarding user manuals and maintenance protocols. With respect to these parts of/these documents, I have decided that their contents is irrelevant to the scope of this request. As a result, I have decided to exempt it under s 22 of the FOI Act.

Having examined the documents myself and considered the relevant provisions of the FOI Act, I have decided to affirm Mr Parkhurst's decision that the remaining parts of/documents are exempt for the following reasons:

- I am in agreement with the reasoning set out in the original decision that this material is exempt under s 45 of the FOI Act. This material was provided by the third party to our Office in confidence, and its disclosure would found an action against our Office for breach of confidence.
- I am in agreement with the reasoning set out in the original decision that this material is exempt under s 47 of the FOI Act. This material was provided by the third party to our Office and is of significant commercial value to this third party, and its release could be reasonably expected to destroy or diminish its value.
- I am in agreement with the reasoning set out in the original decision regarding the conditional exemption of business information in s 47G. This material is information about the third party's business and commercial affairs and its release could be reasonably expected to adversely affect their business, commercial and financial affairs. On balance, I agree with Mr Parkhurst's reasoning and conclusion that its disclosure is not in the public interest. I also agree that the disclosure of this information could be reasonably expected to prejudice the future supply of business information to Commonwealth agencies. And for the reasons set out in the original decision also agree that, on balance, its disclosure is not in the public interest. As a result, I have decided that the material is exempt under s 47G(1)(a) and (1)(b) of the FOI Act.

#### ***Your review rights***

If you are dissatisfied with my internal review decision, you may apply to the Office of the Australian Information Commissioner (OAIC) for review.

An application for review by the 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 at [www.oaic.gov.au/about-us/contact-us](http://www.oaic.gov.au/about-us/contact-us)
- via email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)
- by mail to GPO Box 5218 Sydney NSW 2001
- in person to Level 3, 175 Pitt Street Sydney NSW 2000

More information about the OAIC review is available on its website. Go to <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

If you have any questions about this letter, you may contact via email at [information.access@ombudsman.gov.au](mailto:information.access@ombudsman.gov.au) or via telephone on 1300 362 072.

## Complaints to the Information Commissioner

You may complain to the Information Commissioner about action taken by the Ombudsman in relation to your FOI request.

While there is no particular form required to make a complaint, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way in which your request was processed. It should also identify the Ombudsman's Office as the agency about which you are complaining.

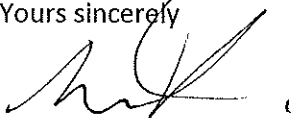
You may lodge your complaint in one of the following ways

- online at:  
[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)
- by overland mail to GPO Box 5218 SYDNEY NSW 2001
- by email to [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au).

## Contacts

If you have any questions about the content of this decision, please contact me on the details below.

Yours sincerely



Sine Dellit

Senior Legal Officer

Legal Team

Commonwealth Ombudsman

Phone: 1300 362 072

Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Website: [ombudsman.gov.au](http://ombudsman.gov.au)

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# Attachment — Schedule of documents

Schedule of documents for: Applicant D			
Ombudsman's reference: FOI 2022-50003			
Item no.	Description	Date	Decision
1	Ombudsman's internal email (plus attachments 2 pages)	04-Jun-19	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
2	Email received by Ombudsman (plus 1 page attachment)	23-May-19	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
3	Ombudsman's internal email (plus attachments 30 pages)	22-Jan-19	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
4	Ombudsman's internal email	22-Jan-19	Exempt s 45, s 47 or s 47G
5	Email from Ombudsman (plus 1 page attachment)	16-Feb-17	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
6	Email received by Ombudsman (plus 1 page attachment)	15-Feb-17	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
7	Section 23 procurement approval	16-Feb-17	Exempt s 45, s 47 or s 47G
8	Licence quotation	17-Feb-22	Exempt s 45, s 47 or s 47G
9	Email received by Ombudsman (plus 2 page attachment)	24-Feb-22	Exempt s 45, s 47 or s 47G
10	Email from Ombudsman to Shared Services (plus attachment 1 page)	21-Feb-22	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
11	Email received by Ombudsman (plus 2 page attachment)	17-Feb-22	Exempt s 45, s 47 or s 47G
12	Email from Shared Services to Ombudsman (plus attachment 1 page)	16-Jul-21	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)

<b>13</b>	Email received by Ombudsman (plus attachment 1 page)	2-Jul-21	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
<b>14</b>	Email from Shared Services to Ombudsman (plus attachment 1 page)	27-Apr-21	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
<b>15</b>	Ombudsman's internal email (plus attachments 5 pages)	23-Apr-21	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
<b>16</b>	Tax invoice	3-Mar-21	Exempt s 45, s 47 or s 47G
<b>17</b>	Ombudsman's internal Minute	19-Apr-21	Exempt s 22
<b>18</b>	Section 23 procurement approval	23-Apr-21	Exempt s45, s 47 or s 47G
<b>19</b>	Email received by Ombudsman (plus 1 page attachment)	30-Mar-21	Exempt s 45, s 47 or s 47G
<b>20</b>	Email received by Ombudsman	16-Jun-20	Exempt s 22
<b>21</b>	Section 23 procurement approval	18-Feb-22	Exempt s 45, s 47 or s 47G
<b>22</b>	Email received by Ombudsman (plus 2 page attachment)	19-Jun-20	Exempt s 22
<b>23</b>	Ombudsman's internal email (plus 1 page attachment)	4-Jun-20	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
<b>24</b>	Ombudsman's internal email	3-Jun-20	Exempt s 22
<b>25</b>	Ombudsman's internal email	2-Jun-20	Exempt s 22
<b>26</b>	Email from Ombudsman (plus 10 page attachment)	2-Jun-20	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)

27	Ombudsman's internal email	2-Jun-20	Exempt s 22
28	Ombudsman's internal email	27-Apr-20	Exempt s 22
29	Ombudsman's internal email	24-Apr-20	Exempt s 22
30	Ombudsman's internal email (plus attachments 13 pages)	2-Jun-20	Exempt s 22
31	Ombudsman's internal email	2-Jun-20	Exempt s 22
32	Ombudsman's internal email	24-Apr-20	Exempt s 22
33	Ombudsman's internal email	2-Jun-20	Exempt s 22
34	Tax invoice from provider	4-Oct-18	Exempt s 45, s 47 or s 47G
35	Tax invoice from provider	8-Feb-19	Exempt s 45, s 47 or s 47G
36	Tax invoice from provider	26-Apr-19	Exempt s 45, s 47 or s 47G
37	Tax invoice from provider	28-Nov-18	Exempt s 45, s 47 or s 47G
38	Tax invoice from provider	10-Aug-18	Exempt s 45, s 47 or s 47G
39	Contract for services		Exempt s 45, s 47 or s 47G
40	Tax invoice from provider	17-Aug-18	Exempt s 45, s 47 or s 47G

41	Tax invoice from provider	1-May-19	Exempt s 45, s 47 or s 47G
42	Section 23 procurement approval	4-Jun-19	Exempt s 45, s 47 or s 47G
43	Section 23 procurement approval	18-Jul-19	Exempt s 45, s 47 or s 47G
44	Tax invoice from provider	9-Jun-20	Exempt s 45, s 47 or s 47G
45	Tax invoice from provider	23-Jun-20	Exempt s 45, s 47 or s 47G
46	Tax invoice from provider	23-Jun-20	Exempt s 45, s 47 or s 47G
47	Tax invoice from provider	31-Aug-20	Exempt s 45, s 47 or s 47G
48	Project proposal	29-Nov-19	Exempt s 45, s 47 or s 47G
49	Section 23 procurement approval	24-Feb-20	Exempt s 45, s 47 or s 47G
50	Project proposal	29-Nov-19	Exempt s 45, s 47 or s 47G
51	Section 23 procurement approval	11-Mar-20	Exempt s 45, s 47 or s 47G
52	Tax invoice from provider	31-Mar-20	Exempt s 45, s 47 or s 47G
53	Section 23 procurement approval	18-Mar-20	Exempt s 45, s 47 or s 47G
54	Licence proposal	23-Apr-20	Exempt s 45, s 47 or s 47G



55	Tax invoice from provider	4-Jun-20	Exempt s 45, s 47 or s 47G
56	Section 23 procurement approval	29-Apr-20	Exempt s 45, s 47 or s 47G
57	Tax invoice from provider	31-Mar-21	Exempt s 45, s 47 or s 47G
58	Ombudsman's internal minute	19-Apr-21	Exempt s 22
59	Section 23 procurement approval	27-Apr-21	Exempt s 45, s 47 or s 47G
60	Section 23 procurement approval	23-Feb-21	Exempt s 45, s 47 or s 47G
61	Tax invoice from provider	2-Aug-19	Exempt s 45, s 47 or s 47G
62	Licence quotation	17-Feb-22	Exempt s 45, s 47 or s 47G
63	Tax invoice from provider	28-Feb-22	Exempt s 45, s 47 or s 47G
64	Tax invoice from provider	11-Sep-18	Exempt s 45, s 47 or s 47G
65	Ombudsman's internal email (plus 1 page attachment)	25-Jun-21	Exempt s 22 (for the email) s 45, s 47 or s 47G (for attachments)
66	Email from provider to Ombudsman (plus attachments 4 pages)	31-Aug-20	Exempt s 45, s 47 or s 47G
67	Email from provider to Ombudsman (plus 1 page attachment)	23-Jun-20	Exempt s 45, s 47 or s 47G
68	Email from provider to Ombudsman (plus attachments 2 pages)	23-Jun-20	Exempt s 45, s 47 or s 47G

69	Ombudsman's internal email (plus attachments 5 pages)	23-Jun-20	Exempt s 22 (for the email) s45, s 47 or s 47G (for attachments)
70	Email from provider to Ombudsman (plus attachments 2 pages)	10-Jun-20	Exempt s 45, s 47 or s 47G
71	Email from provider to Ombudsman (plus attachment 2 pages)	9-Dec-21	Exempt s 45, s 47 or s 47G
72	Section 23 procurement approval	3-Jun-21	Exempt s 45, s 47 or s 47G
73	Email from provider to Ombudsman (plus attachments 6 pages)	25-May-21	Exempt s 45, s 47 or s 47G
74	Licensing proposal	22-Nov-18	Exempt s 45, s 47 or s 47G
75	Email from provider to Ombudsman (plus attachments 26 pages)	22-Nov-18	Exempt s 45, s 47 or s 47G
76	Email from provider to Ombudsman	6-Mar-19	Exempt s 45, s 47 or s 47G
77	Licence proposal	6-Mar-19	Exempt s 45, s 47 or s 47G
78	Section 23 procurement approval	22-Nov-19	Exempt s 45, s 47 or s 47G
79	Email from provider to Ombudsman (plus attachment 3 pages)	15-Feb-18	Exempt s 45, s 47 or s 47G
80	Email from provider to Ombudsman (plus attachment 3 pages)	26-Jul-18	Exempt s 45, s 47 or s 47G
81	Section 23 procurement approval	9-Aug-18	Exempt s 45, s 47 or s 47G
82	Section 23 procurement approval	21-Feb-17	Exempt s 45, s 47 or s 47G

83	Email from provider to Ombudsman (plus attachments 4 pages)	6-Dec-16	Exempt s 45, s 47 or s 47G
84	Email from provider to Ombudsman (plus attachments 1 page)	13-Oct-16	Exempt s 45, s 47 or s 47G
85	Section 23 procurement approval	23-Sep-16	Exempt s 45, s 47 or s 47G
86	Email from provider to Ombudsman	19-Sep-16	Exempt s 45, s 47 or s 47G
87	Email from provider to Ombudsman (plus attachments 6 pages)	15-Feb-16	Exempt s 45, s 47 or s 47G
88	Email from provider to Ombudsman (plus attachments 2 pages)	2-May-16	Exempt s 45, s 47 or s 47G
89	Section 23 procurement approval	23-Feb-16	Exempt s 45, s 47 or s 47G
90	Email from provider to Ombudsman (plus 1 page attachment)	29-Jun-11	Exempt s 45, s 47 or s 47G
91	Email from provider to Ombudsman (plus attachment 52 pages)	27-Jul-17	Exempt s 45, s 47 or s 47G
92	IT consultancy services contract 2017/2018		Exempt s 45, s 47 or s 47G
93	Licence and support contract	26-Jun-14	Exempt s 45, s 47 or s 47G
94	Email from Ombudsman to provider	6-May-20	Exempt s 45, s 47 or s 47G
95	Tax invoice from provider	11-Sep-18	Exempt s 45, s 47 or s 47G

