



Our ref: 240/2022

Email: Truong Na <foi+request-9467-6a1a07ca@righttoknow.org.au>

### **Freedom of Information Request Decision**

Dear JP

The Digital Transformation Agency (DTA) refers to your Freedom of Information request (FOI request) received on 28 October 2022 in which you sought access to documents under the provisions of the *Freedom of Information Act 1982* (FOI Act).

The document you requested:

*As per the Digital Transformation Agency's Procurement of ICT-Related Services (<https://www.anao.gov.au/work/performance-audit/digital-transformation-agency-procurement-ict-related-services>), please provide information relating to which companies responded to the DTA's HGIT RFT and the evaluation ranking of these respondents.*

*"Three tenders were evaluated as either 'good' or 'satisfactory' against each of the two assessment criteria; and two were evaluated as poor." (pp 48-50).*

The DTA has identified three (3) documents in relation to the scope of your FOI request. I have examined these and have decided to exempt part of each of these three (3) documents under sections 47, 47F and 47G of the FOI Act as:

- The documents contain information which are commercially valuable information
- The documents contain information relating to personal privacy
- The documents contain sensitive information about the commercial or business affairs of a third party.

Section 26 of the FOI Act requires the DTA to provide a statement of reasons in support of a decision. In depth reasons for this decision is set out in **Attachment A**.

The FOI Act also provides a number of avenues for review set out in **Attachment B** if you are dissatisfied with any aspect of this decision.

If you have any questions or require further information, please contact the FOI Officer on 02 6120 8595 or via email at [foi@dtg.gov.au](mailto:foi@dtg.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Rutherford', with a stylized flourish at the end.

Doug Rutherford  
Authorised Decision Maker  
Digital Transformation Agency (DTA)

**ATTACHMENT A - STATEMENT OF REASONS**

## **Decision**

I, Doug Rutherford, am an officer authorised to make decisions under subsection 23(1) of the Freedom of Information Act 1982 (FOI Act)

I have examined the document subject to this request and have decided to exempt it from release.

## **Reasons for decision**

### **Section 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:*
- (a) *the Commonwealth or a State; or*
  - (b) *an authority of the Commonwealth or of a State; or*
  - (c) *a Norfolk Island authority; or*
  - (d) *a local government authority.*

In assessing if section 47 the FOI Act applies, I have considered:

- whether the information contained in the documents is trade secrets or valuable commercial information of another individual or organization;
- whether the information if disclosed to a competitor would be liable to cause real or significant harm to the owner of the information; and
- the extent to which the information is already a matter of public knowledge.

I consider this information is not publicly available and is known only to the parties concerned.

Disclosure of this information would, or could reasonably be expected to, reduce the value of the business, and the business relationship with the Department would also be diminished. Therefore, I am satisfied this material consists of commercially valuable information that would be, or could reasonably be expected to be, destroyed or diminished if it were publicly disclosed.

## Section 47F - Public interest conditional exemptions – personal privacy

### *General rule*

- (1) *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).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
  - (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;*
  - (d) *any other matters that the agency or Minister considers relevant.*

Section 4 of the FOI Act provides that ‘personal information’ has the same meaning as in the Privacy Act 1988.

Section 6 of the Privacy Act provides that:

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 Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act in paragraphs [6.116] – [6.117] explain:

*6.116 Personal information means 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 (4 4(1)). In other words, personal information:*

- *identifies, or could identify, a person*
- *says something about a person*
- *may be opinion*
- *may form part of a database*
- *may be true or untrue*
- *relates to a natural person.*

*6.117 Personal information can include a person’s name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.*

In assessing if section 47F of the FOI Act applies, I have considered:

- the definition of the personal information under section 4 of the FOI Act;
- the nature of the information, for example whether the disclosure would cause serious consequences;
- the object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- the extent to which the information is already a matter of public knowledge and/or well known.

I have also taken the below factors against disclosing the information into consideration:

- release of the information could reasonably be expected to prejudice the protection of an individual's right to privacy; and
- the information is not a matter of public knowledge and/or well known.

Having examined the documents, I am satisfied that some of the information is personal information as it identifies a person(s) and provides personal information about an individual(s).

After considering all the relevant factors, I consider that the importance of maintaining the individual's right to privacy outweighs the factors in favor of disclosure. Accordingly, I have decided that parts of the information contained within documents is conditionally exempt under section 47F of the FOI Act.

#### **47G Public interest conditional exemptions – business**

*(1) A document is conditionally exempt if its disclosure under this Act 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, 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 or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.*

In assessing if section 47G of the FOI Act applies, I have considered:

- the nature of the information and whether the disclosure would cause no serious consequences;
- the object of the FOI Act, which encourages a right of access to documents held by government agencies, subject to certain exemptions; and
- the extent to which the information is already a matter of public knowledge and/or well known.

I have also taken the below factors against disclosing the information into consideration:

- the disclosure of information relating to the business, commercial or financial affairs of the third party could be considered as unreasonable disclosure; and
- the information is not a matter of public knowledge and/or well known.

In examining the document, I am satisfied that releasing the information within the document could involve the unreasonable disclosure of the financial or business affairs of a third party.

Accordingly, I have decided that the information within the document is conditionally exempt under section 47G of the FOI Act.

#### **Public interest considerations**

#### **Public interest conditional exemption considerations**

In relying on the public interest conditional exemptions under sections 47F and 47G, I considered the public interest factors under section 11A – Access to documents on request.

**Section 11A**

*(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).**

**Section 11B (3), (4) and (5) – Public interest exemptions – factors**

*(3) Factors favoring 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.*

*(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;*
  - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;*
  - (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.*

When considering the release of any information under the FOI Act, I need to consider that the information contained in these documents can be released to everyone. In the case of identifying junior officials, DTA does not provide these details to members of the public. On the basis that these officials do not exercise any delegations of authority.

In consultation with the third party, they have requested that the DTA consider the confidential arrangements and in particular the terms of those arrangements.

Considering the submissions of the third party, I am satisfied that releasing the requested information would not be in the public interest.

## **ATTACHMENT B – REVIEW RIGHTS**

If you are dissatisfied with this decision, you have certain rights of review available to you. Firstly, under section 54 of the FOI Act, you may apply to DTA for an internal review of the decision. Your application must be made by whichever date is the later between:

- 30 days of you receiving this notice; or
- 15 days of you receiving the documents to which you have been granted access

An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to: [foi@dta.gov.au](mailto:foi@dta.gov.au)

If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

### ***Review by the Australian Information Commissioner***

Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

Director of FOI Dispute Resolution  
GPO Box 5218  
SYDNEY NSW 2001

### ***Complaints to the Australian Information Commissioner***

You may complain to the Australian Information Commissioner about action taken in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:  
Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the DTA as the relevant agency.

### ***Contacts***

If you have any queries about this notice, please contact the FOI team by email [foi@dta.gov.au](mailto:foi@dta.gov.au).