



14 April 2023

Anon

BY EMAIL: foi+request-9793-8cf835b6@righttoknow.org.au

In reply please quote:

FOI Request: FA 23/01/00787

File Number: FA23/01/00787

Dear Anon,

Freedom of Information (FOI) request – Access Decision

On 13 January 2023, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

From the Recruitment SESB1 promotions, APSjobs reference VN-0696391, I would like to view the business case(s), requisition and selection methodology and job advertisement pertaining to and in the lead up to promotions advertised in APS Weekly Gazette, 12 Jan 2023.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

4 Documents in scope of request

The Department has identified two documents as falling within the scope of your request. These documents were in the possession of the Department on 13 January 2023 when your request was received.

5 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in part with deletions

6 Reasons for Decision

My findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

6.1 Section 47E of the FOI Act – Operations of Agencies

Section 47E(c) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by an agency.

The Department operates in a position of trust within the border environment and as such the highest standard of conduct must be encouraged and maintained.

The Department's Professional Standards Framework promotes the highest of standards of professional conduct expected of the Department's workforce. Contained within the professional standards framework, is the integrity framework which includes measures designed to protect our workforce from criminal influence and to mitigate the potential for corruption risk. Any adverse effect to the effectiveness of the Department's ability to manage its personnel within its integrity framework exposes the Department to potential integrity risk which would result in a substantial adverse effect on the operations of the Department.

At times, the policy space that this Department operates in can be highly controversial and divisive and in some circles, an unpopular aspect of government policy. The Department also operates in a highly sensitive operational environment. As such, affording protection to its staff, and prospective staff, is a high priority for the Department.

Staff names, and those of people applying to join the Department, are not published outside the Department in order to protect staff against the risk of inappropriate unsolicited approaches, personal attack and harassment.

The disclosure of staff names and direct contact details outside the Department could expose those members of staff, or people seeking to join the Department, to unsolicited approaches by individuals with criminal affiliations and may result in serious risks to the security and integrity of the Department's lawful activities. There have also been documented cases of members of staff of the Department being harassed and receiving personal threats to their safety.

I am therefore satisfied that the likelihood of a threat from unknown individuals to members of staff is based not based on intangible or hypothetical threats.

The Department has a primary duty of care to ensure, so far as is reasonably practical, the health and safety of its officers under the *Work Health and Safety Act 2011* (WHS Act). The Department must ensure, as far as is reasonably practicable, that the health and safety of other persons is also not put at risk from work carried out as part of the conduct of the Department.

I am of the view that the disclosure of the names of job applicants contained within the documents could impact on the ability of the Department to comply with its health and safety obligations under the WHS Act. This this would, or could reasonably be expected to, have a substantial adverse effect on the management of personnel by the Department.

I have decided that the documents are conditionally exempt under section 47E(c) of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.3 below.

6.2 Section 47F of the FOI Act – Personal Privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see section 4 of the FOI Act and section 6 of the *Privacy Act 1988*).

Document 2 contains the names of people who have applied for a position with the Department of Home Affairs. I consider that disclosure of the information marked 's47F' in the document would disclose personal information relating to third parties. The information within the document would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to the following four factors set out in s.47F(2) of the FOI Act:

- *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 available resources;*
- *any other matters that I consider relevant.*

I have considered each of these factors below.

The information relating to the third parties is not well known and would only be known to a limited group of people within the Department with a business need to know. As this information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

You have not indicated that you have third party consent of any of the applicants to access their personal information. This indicates that releasing their personal information to you would be unreasonable.

It has not been practical for the Department to consult with the 34 candidates shortlisted for interview. In absence of their express consent, I consider that releasing the information to you would be unreasonable.

On the basis of the information before me, I am satisfied that the disclosure of the information within the document would involve an unreasonable disclosure of personal information about a number of individuals.

I have decided that the information referred to above is conditionally exempt under section 47F of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 6.3 below.

6.3 *The public interest – section 11A of the FOI Act*

As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access to the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being 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.*

Having regard to the above I am satisfied that:

- Access to the documents would promote the objects of the FOI Act.
- The subject matter of the documents does not seem to have a general characteristic of public importance. The matter has a limited scope and, in my view, would be of interest to a very narrow section of the public.
- No insights into public expenditure will be provided through examination of the documents.
- You do not require access to the documents in order to access your own personal information.

I have also considered the following factors that weigh against the release of the conditionally exempt information in the documents:

- Disclosure of the conditionally exempt information under **section 47E(c)** could reasonably be expected to prejudice the ability of the Department to manage future recruitment exercises. I consider that the disclosure of this information may hinder the willingness of current and prospective staff to apply for positions within the Department if they believed that their suitability assessment would be publically released. There is a real public interest in this Department being able to undertake effective recruitment exercises in the future. I consider that any impediment to active applicant participation in recruitment exercises would be contrary to the public interest, and that this factor weighs strongly against disclosure.
- Disclosure of the personal information which is conditionally exempt under **section 47F** of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that non-compliance with the Department's statutory obligations concerning the protection of personal information would be contrary to the public interest and that this factor weighs strongly against disclosure.

I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- 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.*

I have confirm that I not taken into account any of those factors in this decision.

Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents would be contrary to the public interest and it is therefore exempt from disclosure under the FOI Act.

7 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

8 Your Review Rights

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

9 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department 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

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 Department of Home Affairs as the relevant agency.

10 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffair.gov.au.

[signed electronically]

Rheannon

Position number 60102869

Authorised Decision Maker

Department of Home Affairs