



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/09/01362
File Number ADF2015/49632

Scope of request

1. Original request received 16 September 2015:
The following classes of documents relating to contracts CN3285468 and CN1281531:
 - *The full contracts between STATT and DIBP*
 - *Briefs filed in relation to either contract*
 - *Proposals from other competing tenderers for the contracts*
 - *Cost assessments and value for money assessments of the contracts and STATT's services*
 - *Tender panel discussions and expenditure reports*
 - *Documents that discuss the ultimate ownership or financial viability of the company*
 - *Subsequent reports or inquiries into STATT's performance under the contracts*
2. On 3 February 2016 the Department sent you a notice, under s.24AB of the Freedom of Information (FOI) Act, advising that it intended to refuse your request on the basis that processing it would involve an unreasonable diversion of resources.
3. On 3 February 2016 you agreed to amend the scope of your request to the following:
 - *Procurement spending proposals*
 - *Documents from ACBPS to STATT requesting proposal to continue and expand its work*

Documents in scope

4. The Department identified 18 documents comprising 323 pages as being within the scope of your request. The documents are listed at Attachment B – Schedule of Documents.

Authority to make decision

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

Information considered

6. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Departmental files and/or documents (identified above); and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

7. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.
8. This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reasons(s) for each of the deletions in the document (s.22(3) of the FOI Act).
9. Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the FOI Act.

Deletion of exempt material under s.22(1)(a)(i) of the FOI Act

10. The Schedule of Documents (Attachment B) and the documents released (Attachment D) detail the exemptions that have been applied. Exemptions were applied on the following grounds:

Section 24A(1) – document lost or non-existent

11. Document 2 (an attachment to Document 1) could not be located despite multiple searches by the relevant business area of both electronic and paper files.
12. I am therefore satisfied that the document is lost and therefore exempt the document under s.24A(1) of the FOI Act.

Section 34(3) - information the disclosure of which would reveal a Cabinet deliberation or decision (where the deliberation or decision has not been officially disclosed)

13. Document 3 (at folio 7) contains information which discloses a Cabinet deliberation and/or decision which has not been officially disclosed (as confirmed with the Department of Prime Minister and Cabinet).
14. I have therefore exempted the material under s.34(3) of the FOI Act.

Section 47E(d) – have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

15. Section 47E(d) provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
16. The material exempted under s.47E(d) consists of detailed operational information regarding anti-people smuggling communications, including:
 - details of communications operations as conducted in specific countries;
 - detailed methodology and reasoning behind the communication operations; and
 - the time periods and intensity of the communications operations.
17. Although the information relates to public information campaigns, it contains detail regarding the design, planning and execution of those campaigns which is not in the public domain.
18. If this information were to be released, it would provide people smugglers with detailed information about the Department's public communication strategies, tactics and operations for protecting the Australian border. This information would assist people smugglers to vary their operations, including on a country-by-country basis, to lessen the impact and effectiveness of the Department's and its contracted provider's activities.

19. On this basis, I am satisfied that release of the information would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Department's operations. I am therefore satisfied that the material in issue is conditionally exempt under s.47E(d) of the Act.

Application of the public interest test

20. While I have found that the conditional exemption in s.47E(d) of the FOI Act applies to the information outlined above, s.11A(5) of the FOI Act requires me to disclose the information unless access at this time would, on balance, be contrary to the public interest. I will now consider whether disclosure would be contrary to the public interest.

21. In determining whether disclosure would be contrary to the public interest, section 11B(3) sets out a number of relevant factors which point in favour of release. These factors are:

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

22. I acknowledge that release of the document without the exemptions made under s.47E(d) would promote the objects of the FOI Act, through facilitating and promoting public access to information.

23. However, I consider that the release of the information would make a negligible further contribution to public debate, would not promote effective oversight of public expenditure or allow a person to gain access to his or her own personal information.

24. In contrast, I consider that the ability of the Department to conduct effective and lawful operations to counter people smuggling and to protect Australia's border to be strongly in the public interest.

25. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s.47E(d) to be contrary to the public interest. Accordingly, I have decided that the documents are exempt in part under s.47E(d) of the FOI Act. The exemptions have therefore been applied to the documents released.

Section 47F – personal privacy

26. Section 47F(1) of the Act provides:

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).

The relevant documents contain 'personal information'

27. I am satisfied that a document to which you have sought access (Document 1) contains 'personal information', being identifying information of STATT Consulting employees.

Disclosure would involve the 'unreasonable disclosure of personal information'

28. In assessing whether a particular disclosure would be 'unreasonable', s.47F(2) sets out a number of factors which the Department *must* consider.

29. These factors are:

- 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 the agency or Minister considers relevant.

30. The personal information in the document is not well known and is not available in publicly accessible sources. As such, I consider that disclosure of the personal information in the document would be unreasonable. It is therefore conditionally exempt from release, subject to a public interest test.

Application of the public interest test

31. While I acknowledge that release of the document will promote the objects of facilitating and promoting public access to information, I consider that the release of individual identifying and personal information would make a negligible further contribution to public debate.
32. In contrast, I consider that the protection of the individuals' right to privacy should be given the upmost importance.
33. Taking into account the above matters, on balance, I consider that disclosure of the personal information in the document is contrary to the public interest. Accordingly, I have decided that the document is exempt in part under s.47F of the FOI Act. The exemptions have therefore been applied to the document released.

Section 47G(1)(a) – business information which would or could adversely impact a person's business affairs

34. The exempted information consists of the costs for discrete components of the contract with STATT Consulting. As such, it provides detail of the costs for specific information campaigns conducted at certain times.
35. This information is commercially sensitive to STATT Consulting as it reveals what it has charged to undertake certain types of communication work for the Department. If released, this information would disadvantage STATT Consulting in any future tender processes for Departmental or Australian Government work, as competitors would know approximately what charges were levied by STATT Consulting for discrete projects. This could lessen STATT Consulting's price competitiveness when undertaking tender activities.
36. I am therefore satisfied that the information specifically identified in the relevant documents is conditionally exempt under s.47(G)(1)(a) of the FOI Act.

Application of the public interest test

37. While I acknowledge that there is a public interest in the documents of the Department being made available to the public for the purpose of encouraging public debate and to promote oversight of the Department's activities, I do not consider that disclosure of the exempt material would facilitate these objects.
38. The scope of the redactions is limited to contract variations relating to specific projects of shorter term duration. In addition, I note that the estimated total value of the contract with STATT Consulting is already publically available on AusTender.

39. I do not consider that the actual costs of the services included in the documents need to be released in order to promote effective oversight of public expenditure, given that the processes undertaken to determine value for money are included in the documents released.

40. In summary, I consider that release of the information exempted under s.47(G)(1)(a) in the relevant documents would be contrary to the public interest. As such, I have exempted the information from release.

Deletion of irrelevant material under s.22(1)(a)(ii) of the FOI Act

41. I find that the documents relevant to your request contain some material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly. These deletions are detailed in the document released.

42. The material deleted under s.22(1)(a)(ii) comprises:

- information relevant to retrieval of the information from systems for the purpose of managing this FOI request; and
- direct contact details of staff and the names of non-Senior Executive Service staff (although position titles have been released). The intended deletion of this information was advised to you on 22 September 2015 and you did not raise any objections.



Authorised FOI decision maker
Department of Immigration and Border Protection
Email: foi@border.gov.au

2 ^{May} April 2016



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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File Number ADF2015/49632

No.	Date of document	Pages	Description	Decision on release	Authority under the FOI Act
1.	11/2012	1-4	Letter	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47F(1) s.47G(1)(a)
2.	n/a	n/a	Attachment to letter	Not released as document not located	S24A(1)
3.	01/02/2013	5-25	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.34(3) s.47E(d) s.47G(1)(a)
4.	25/06/2013	26-44	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
5.	27/08/2013	45-66	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
6.	09/01/2014	67-87	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
7.	17/04/2014	88-104	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
8.	15/05/2014	105-127	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
9.	23/06/2014	128-144	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
10.	28/08/2014	145-161	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
11.	09/09/2014	162-176	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)

No.	Date of document	Pages	Description	Decision on release	Authority under the FOI Act
12.	26/09/2014	177-198	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
13.	07/11/2014	199-220	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
14.	19/12/2014	221-244	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
15.	27/03/2015	245-269	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
16.	15/06/2015	270-291	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
17.	30/06/2015	292-314	Minute and attachments	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)
18.	27/08/2015	315-323	Minute and attachment	Released in Part	s.22(1)(a)(ii) s.47E(d) s.47G(1)(a)

Attachment C – Extract of relevant legislation (FOI Act)

11A Access to documents on request

Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.

- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (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).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring 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.

Irrelevant factors

- (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.

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or

- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
- (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

34 Cabinet documents

General rules

- (1) A document is an exempt document if:
 - (a) both of the following are satisfied:
 - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
 - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or
 - (b) it is an official record of the Cabinet; or
 - (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or
 - (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
- (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

Exceptions

- (4) A document is not an exempt document only because it is attached to a document to which subsection (1), (2) or (3) applies.

Note: However, the attachment itself may be an exempt document.
- (5) A document by which a decision of the Cabinet is officially published is not an exempt document.
- (6) Information in a document to which subsection (1), (2) or (3) applies is not exempt matter because of this section if the information consists of purely factual material, unless:
 - (a) the disclosure of the information would reveal a Cabinet deliberation or decision; and
 - (b) the existence of the deliberation or decision has not been officially disclosed.

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

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.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following

- (a) a medical practitioner
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

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, Norfolk Island 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.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) 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.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).