



Attachment A

DECISION RECORD

Request Details

FOI Request FA 16/10/00977
File Number ADF2016/59815

Scope of request

1. On 25 August 2016 the Department received your request for:

Any contract for the provision of detention services at Villawood Immigration Detention Centre between the Department of Immigration and Border Protection and Serco Group Pty LIMITED, Serco Australia Pty Ltd, or any such subsidiaries.

Documents in scope

2. The Department has located three documents within the scope of your request. These documents are detailed at the **Attachment B – Schedule of Documents**.

Authority to make decision

3. 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 Departmental records.

Information considered

4. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - Departmental documents;
 - Consultations with relevant Departmental business areas;
 - Consultation with Serco (relevant service provider); and
 - The Australian Information Commissioner's guidelines relating to access to documents held by government.

Decision

5. I have decided to exempt the documents in part. The exemptions are detailed in the Schedule of Documents and in the documents released.

Basis for decision

6. 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.
7. 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 reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).
8. 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.

Exempted material

Section 45(1) – Documents containing material obtained in confidence

9. A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.
10. Material obtained in confidence must satisfy the following criteria:

The information:

- must be specifically identified;
- must have the necessary quality of confidentiality;
- must have been communicated and received on the basis of a mutual understanding of confidence;
- must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment.

(Paragraph 5.159, Guidelines issued by the Australian Information Commissioner under s93A of the Freedom of Information Act 1982)

11. The Service Provider's (Serco) confidential information is specified in Schedule 9 (Confidential Information) of the document. The information comprises certain detailed information about Serco's service requirements under the contract and the fees for its services.
12. The exempted information is known only to Serco and certain parts of the Department. It is not publicly available.
13. I am satisfied that the information exempted under section 45(1) is material obtained in confidence, having the necessary quality of confidentiality and has been communicated with a mutual understanding of confidence. Release of this information would cause harm to Serco's commercial activities, particularly in terms of revealing detailed pricing information – the basis upon which Serco won the contract under a competitive tender process.
14. I am satisfied that disclosure of the exempted material would constitute a breach of confidence. I have therefore exempted the documents in part under section 45(1) of the FOI Act.

Section 47E(d) – Public interest conditional exemption - operations of an agency

15. Section 47E(d) of the FOI Act 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. I have applied exemptions under section 47E(d) to the following types of information in the documents:
- operational email addresses;
 - certain details about security requirements and processes within detention facilities; and
 - detailed service provider performance assessment and performance management methodologies.
17. I am satisfied that release of this information could reasonably be expected to compromise the security of immigration detention facilities through revealing sensitive security information and procedures.
18. I am also satisfied that release of the material relating to performance assessment and performance management methodologies would significantly impact the Department's detention operations. Release of such information into the public domain would adversely impact the future exchange of service provider performance measures and Departmental assessments of service provider performance, due to concerns that the information would be released to the public. It is essential that the Department be able to administer a performance measurement framework with service providers with a degree of confidentiality.
19. I am therefore satisfied that the material in issue is conditionally exempt under s.47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions – personal privacy

20. 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).

21. I am satisfied that Schedule 7 of the document contains 'personal information', being the names of various Serco personnel.

Disclosure would involve the 'unreasonable disclosure of personal information'

22. In assessing whether a particular disclosure would be 'unreasonable', s.47F(2) sets out a number of factors which the Department must consider. 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.
23. I consider that the personal information in the document is not known to the applicant or readily available in the public domain. As such, I consider that disclosure of the personal information in the documents would be unreasonable. I therefore find that the material is conditionally exempt under s.47F(1) of the FOI Act.

Section 47G(1)(a) – Public interest conditional exemptions – commercial or financial affairs of an organisation

24. Section 47G(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, unreasonably affect a person adversely in respect of their lawful business, commercial or financial affairs.
25. I have conditionally exempted the following types of material in the documents on the basis that its release would have an unreasonable and adverse impact on the service provider's business affairs:
- insurance details;
 - financial undertakings;
 - performance securities;
 - abatement amounts should the service provider not meet performance requirements; and
 - details of fees to be paid to the service provider for different components of the service delivery.
26. This information is commercially sensitive and its release would disadvantage Serco as it would provide information to competitors regarding the basis on which Serco gained the Immigration Detention Facilities and Detainee Services Contract (Detention Services Contract).
27. Serco also advised that the information may be utilised specifically by industry competitors as well as others to the detriment of Serco's commercial interests.
28. I am therefore satisfied that the material is conditionally exempt under s.47G(1)(a) of the FOI Act.

Application of the 'public interest' test

29. While I have found that the conditional exemptions in s.47E(d), s.47F(1) and s.47G(1)(a) of the FOI Act apply 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.
30. In determining whether disclosure would be contrary to the public interest, s.11B(3) of the FOI Act 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.
31. I acknowledge that release of the documents without the conditional exemptions would promote the objects of the FOI Act, through facilitating and promoting public access to information.

32. I consider that the release of the information would make a negligible further contribution to public debate.
33. The Department's expenditure on the Detention Services Contract is already subject to detailed scrutiny, including by the Australian National Audit Office, and disclosure of the information would not promote effective oversight of public expenditure.
34. I do not consider that release of the exempted material would allow a person to access his or her own information.
35. Contrary to any factors favouring release of the exempted material, I note the following factors against release in this case:
- release would compromise security within immigration detention facilities and would adversely impact the Department's administration of performance management processes under the contract;
 - release would compromise the privacy of several individuals; and
 - release would unreasonably affect the service provider's commercial affairs and interests.
36. Taking into account the above matters, on balance, I consider that disclosure of the information in the documents exempted under s.47E(d), s.47F(1) and s.47G(1)(a) of the Act to be contrary to the public interest. Accordingly, I have applied these exemptions to the documents.

Deletion of irrelevant material

37. The material deleted under section 22(1)(a)(ii) comprises the name of one non-senior executive staff member, who acted as a witness to the Deed of Variation.



Authorised decision maker
Department of Immigration and Border Protection

16 May 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/10/00977
File Number ADF2016/59815

1. Volume 1 (containing 387 folios)

Folios	Description	Decision	FOI Legislation
1-124	Main contract	Exempt in part	s. 45(1), s. 47E(d) s. 47G(1)(a)
125-156	Schedule 1 – Glossary	Exempt in part	s. 47G(1)(a)
157-322	Schedule 2 – Statement of Work (incl. Annexures A-D)	Exempt in part	s. 47E(d)
323-326	Schedule 3 – Partnering Charter	Release in full	
327-387	Schedule 4 – Performance Management Framework (incl. Annexure A)	Exempt in part	s. 47E(d), s. 47G(1)(a)

2. Volume 2 (containing 344 folios)

Folios	Description	Decision	FOI Legislation
1	Title page	Release in full	
2-11	Schedule 5 – Detention Services Fee	Exempt in part	s.45(1), s 47G(1)(a)
12-277	Annexure A – Pricing Tables	Exempt in full	s.45(1), s 47G(1)(a)
278-279	Annexure B – Service Delivery by Facility	Release in full	
280-295	Schedule 6 – Transition Requirements (incl. Annexures A and B)	Exempt in part	s 47G(1)(a)
296-297	Schedule 7 – Key Personnel and Approved Subcontractors	Exempt in part	s. 47F(1)
298-313	Schedule 8 – Performance Securities	Exempt in part	s.45(1), s 47G(1)(a)
314-317	Schedule 9 – Confidential Information	Release in full	
318-323	Schedule 10 – Confidentiality Deed	Release in full	
324-327	Schedule 11 – Deed of non-disclosure of personal information	Release in full	
328-331	Schedule 12 – Insurance	Exempt in part	s.45(1), s 47G(1)(a)
332-339	Schedule 13 – Change Control	Release in full	
340-344	Schedule 14 – Legislation and Commonwealth Policies	Release in full	

3. Deed of variation (containing 4 folios)

Folios	Description	Decision	FOI Legislation
1-4	Deed of variation No. 1	Exempt in part Irrelevant Information deleted	s.45(1), s 47G(1)(a) s.22(1)(a)(ii)