



11 December 2017

**In reply please quote:**

FOI Request: FA 17/05/00569

File Number: ADF2017/48405

Dear [REDACTED]

**Freedom of Information (FOI) request - Access Decision**

On 10 May 2017, the Department of Immigration and Border Protection (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:

*The current contract between the Department and Australian Helicopter Pty Ltd for provision of civil maritime surveillance services.*

On 16 May 2017 you agreed to revise the scope of your request to the following documents:

*The current contract between Department of Immigration & Border Protection and Australian Helicopter Pty Ltd (also known as Babcock) on CNID 24625 for provision of civil maritime surveillance services (05/1035). Specifically, the:*

- *Current commercial contract*
- *Appendices*
- *Addendum and amendments*

**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 documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- consultation responses from third parties consulted in accordance with the FOI Act
- advice from the relevant business areas of the Department
- the Department's guidance material on the FOI Act

### **4 Documents in scope of request**

The Department has identified 26 documents as falling within the scope of your request. These documents were in the possession of the Department on 10 May 2017 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 full
- Release 23 documents in part with deletions
- Exempt two documents in full from disclosure

#### **5.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 12 May 2017, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request. I have therefore decided that parts of documents marked 's22(1)(a)(ii)' would disclose the names of Departmental staff that are not at the SES level, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

### **6 Reasons for Decision**

For the reasons set out below, I have exempted certain information in the documents.

### **6.1 Section 47(1)(b) of the FOI Act – Documents disclosing commercially valuable information**

Section 47(1)(b) provides that a document is an exempt document if its disclosure under the FOI Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. The commercial value may relate to the profitability or viability of a continuing business operations or commercial activity in which the company is involved.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I consider that documents numbered 1-6 and 8-26 contain information of a commercial value and that there is a reasonable likelihood that the value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The information contained within the document is valuable for the purpose of carrying on the commercial activities in which the entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

I have therefore decided that material within documents numbered 1-6 and 8-26 are exempt from disclosure under section 47(1)(b) of the FOI Act.

### **6.2 Section 47F(1) of the FOI Act – Personal Privacy**

Section 47F(1) 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 s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F(1)' in the documents would disclose personal information relating to third parties. The information within the documents 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 four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- 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.

The information relating to the third parties is not well known and would only be known to a limited group of people 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.

I do not consider that the information relating specifically to the third parties would be relevant to the broader scope of your request, as you are seeking access to the contract and other related documents, rather than information which wholly relates to other individuals.

I am satisfied that the disclosure of the information within the documents 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(1) 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 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.
- I consider that the subject matter of the documents does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.

- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

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

- The 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
- It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily 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 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 is not in the public interest and therefore exempt from disclosure under the FOI Act.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>.

## **8 Your Review Rights**

### Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

OR

By email to: [foi.reviews@border.gov.au](mailto:foi.reviews@border.gov.au)

By mail to:  
Freedom of Information Section  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

*Review by the Office of the Australian Information Commissioner*

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 Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **9 Making a Complaint**

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

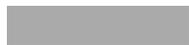
Your enquiries to the Australian Information Commissioner can be directed to:  
Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

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 Department of Immigration and Border Protection 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@border.gov.au](mailto:foi@border.gov.au).

*(signed electronically)*

  
FOI Officer | Freedom of Information Section  
FOI, Privacy and Records Management Branch  
Corporate Services Division  
Department of Immigration and Border Protection



### SCHEDULE OF DOCUMENTS

FOI Request FA 17/05/00569  
File Number ADF2017/48405

No.	Date of document	Folio	Description	Decision on release	
Attachment A					
1.	18 Jul 2007	1-144	Contract	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s.47F(1)
Attachment B					
2.	25 Aug 2005	1-5	Schedule 1	Exempt in part	s 47(1)(b)
3.	Undated	6-41	Schedule 1 Annex A	Exempt in full	s 47(1)(b)
4.	25 Aug 2005	42-48	Schedule 2	Exempt in part	s 47(1)(b)
5.	25 Aug 2005	49-52	Schedule 2 Annex A	Exempt in part	s 47(1)(b)
6.	25 Aug 2005	53-73	Schedule 3	Exempt in part	s 47(1)(b)
7.	25 Aug 2005	74-75	Schedule 3 Annex A	Release in full	n/a
8.	25 Aug 2005	76-78	Schedule 3 Annex B	Exempt in part	s 47(1)(b)

No.	Date of document	Folio	Description	Decision on release	
9.	Undated	79-91	Schedule 4	Exempt in part	s 47(1)(b)
10.	5 Jul 2007	92-101	Schedule 4 Annex A	Exempt in part	s 47(1)(b)
11.	25 Aug 2005	102-108	Schedule 4 Annex B	Exempt in part	s 47(1)(b)
12.	29 Aug 2007	109-115	Schedule 5	Exempt in part	s 47(1)(b)
13.	Undated	116-117	Change of Contact Proposal (CCP) Matrix	Exempt in full	s 47(1)(b)
14.	27 Jun 2007	118-123	CCP001	Exempt in part	s 47(1)(b) s 47F(1)
15.	6 May 2007	124-131	CCP002	Exempt in part	s 47(1)(b) s 47F(1)
16.	6 May 2007	132-142	CCP003	Exempt in part	s 47(1)(b) s 47F(1)
17.	18 Jul 2007	143-147	CCP004	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
18.	26 Sep 2011	148-247	CCP005(1)	Exempt in part	s 22(1)(a)(ii) s 47(1)(b)
19.	9 Jun 2009	248-254	CCP005(2)	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
20.	28 Apr 2011	255-261	CCP006	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)

No.	Date of document	Folio	Description	Decision on release	
21.	12 Sep 2011	262-265	CCP007	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
22.	6 Sep 2013	266-284	CCP011	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
23.	30 Aug 2016	285-292	CCP015	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
24.	2 Sep 2016	293-294	CCP016	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
25.	23 Nov 2016	295-297	CCP017	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)
26.	18 Nov 2014	298-299	Minor Wording Change	Exempt in part	s 22(1)(a)(ii) s 47(1)(b) s 47F(1)