



Australian Government

Department of Health and Aged Care

FOI reference: 25-0019 LD

Health Anon

Email: foi+request-12050-63c3d94c@righttoknow.org.au

Dear Health Anon

Decision on your Freedom of Information Request

I refer to your information access request of 12 September 2024, made to the Department of Health and Aged Care (the department) under the *Freedom of Information Act 1982* (Cth) (FOI Act). In your request, you sought access to:

All approach to market documents and the department's procurement evaluation and value for money assessment relating to CN4085822

<https://www.tenders.gov.au/Cn/Show/af64de87-4fd4-4b89-825c-2cc0f2978db3> which shows a contract awarded to Accenture for \$289,360,500.00

CN ID: CN4085822

Agency: Department of Health and Aged Care Publish

Date: 5-Aug-2024

Category: Computer services

Contract Period: 2-Jul-2024 to 30-Jun-2026

Contract Value (AUD): \$289,360,500.00

Description: ICT Transformation Delivery

Procurement Method: Open tender

I am authorised under subsection 23(1) of the FOI Act to make decisions in relation to Freedom of Information requests. I am writing to notify you of my decision on your access request.

Extension of time to process request

On 10 October 2024, the department informed you that it was consulting with third parties whose information was contained in documents identified as relevant to your request under section 27 of the FOI Act. As a result, the statutory timeframe for your request was extended by 30 days to 11 November 2024.

Reasonable searches

The department has conducted reasonable searches for documents in scope of your request. As per the FOI Guidelines [at 3.89], these searches were undertaken with reference to:

- the subject matter of your request
- the department's current and past file management systems
- the department's record management systems
- the individuals within the department with knowledge of the subject matter of the documents, or who could assist with location of documents
- the age of the documents.

I am satisfied that the searches undertaken were both thorough and reasonable in the context of the scope of your request, the resources of the department, and the requirements of the FOI Act and FOI Guidelines.

Decision on access

I have identified 2 documents that are relevant to your request.

These documents were in the possession of the department when your request was received.

I have decided to:

- grant access to one document in full
- grant access to another document in part, subject to the deletion of exempt and irrelevant material.

A schedule setting out the documents relevant to your request, with my decision in relation to those documents, is at **ATTACHMENT A**.

My reasons for not providing access to material that has been deleted from the documents are set out in **ATTACHMENT B**.

Legislative provisions

The FOI Act, including the provisions referred to in my decision, is available on the Federal Register of Legislation website: www.legislation.gov.au/Series/C2004A02562.

The *Privacy Act 1988* (Cth) (Privacy Act), can also be accessed from the Federal Register of Legislation website here: www.legislation.gov.au/Series/C2004A03712.

Your review rights

I have set out your review rights at **ATTACHMENT C**.

Publication

Where I have decided to release documents to you, the department may also publish the released material on its Disclosure Log, as required by section 11C of the FOI Act. The department will not publish personal or business affairs information where it would be unreasonable to do so.

For your reference the department's Disclosure Log can be found at:
www.health.gov.au/resources/foi-disclosure-log.

Contacts

If you require clarification of any matters discussed in this letter you can contact the FOI Section on (02) 6289 1666 or at FOI@health.gov.au.

Yours sincerely



Amanda Chesher
Assistant Secretary
Aged Care Funding Reform & Systems Branch
8 November 2024

ATTACHMENT A.

SCHEDULE OF DOCUMENTS

FOI REQUEST 25-0019 LD

Document	Pages	Date	Description	Decision on access	Relevant provisions of FOI Act
1	260	26 June 2024	Commitment Approval Minute <i>Note: only pages 6-15, 20-29 and 148-153 are relevant to the request; pages 6-15 and 20-29 are exempt from release</i>	Granted in part	s22 s47D s47E(b) s47E(d) s47F s47G
2	6	January 2024	Request For Quote Document	Granted in full	N/A

ATTACHMENT B.

**REASONS FOR DECISION
FOI 25-0019 LD**

1. Material taken into account

In making my decision, I had regard to the following:

- the FOI Act
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the terms of your FOI request as outlined above
- submissions from third parties consulted about documents which contain information concerning them
- the content of the documents sought, and
- advice from departmental officers with responsibility for matters relating to the documents sought.

2. Finding of facts and reasons for decision

My findings of fact and reasons for deciding that the exemptions identified in the schedule of documents apply to the parts of document 1 are set out below.

3. Section 22 - deletion of irrelevant material

Section 22 of the FOI Act applies to documents containing exempt material (subparagraph (1)(a)(i)) and irrelevant information (subparagraph (1)(a)(ii)) and allows an agency to delete such material from a document.

I have deleted material in the documents which can reasonably be regarded as irrelevant to your request. Your request is for approach to market documents, the department's procurement evaluation and value for money assessment. In document 1, this information is contained in pages 6-15, 20-29 and 148-153. Information not relevant to these matters has been deleted from document 1 released to you, in accordance with section 22 of the FOI Act.

4. Section 47D - financial or property interests of the Commonwealth

Section 47D of the FOI Act provides that a document is conditionally exempt if its disclosure would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency.

Paragraph 6.80 of the FOI Guidelines provides that the 'financial or property interests of the Commonwealth or an agency' may relate to assets, expenditure or revenue-generating activities.

For section 47D of the FOI Act to apply, there is a requirement that there would be a 'substantial adverse effect' on the financial or property interests of the Commonwealth or an agency.

The FOI Guidelines provide [at 6.18 and 6.82]:

6.18 The term 'substantial adverse effect' broadly means 'an adverse effect which is sufficiently serious or significant to cause concern to a properly concerned reasonable person'. The word 'substantial', in the context of substantial loss or damage has been interpreted as including 'loss or damage that is, in the circumstances, real or of substance and insubstantial or nominal'.

6.82 A substantial adverse effect may be indirect. For example, where disclosure of documents would provide the criteria by which an agency is to assess tenders, the agency's financial interest in seeking to obtain the best value for money through a competitive tendering process may be compromised.

You have requested access to document that contains financial information relating to CN4085822.

I am satisfied that disclosure of the information could reasonably be expected to have a substantial adverse effect on the financial interests of the department. Releasing the financial information would reveal the department's assessment of value for money for consultancy-related contracts. When combined with other information relating to the delivery of the project, this information would enable commercial entities to position their tender submissions to their own financial and competitive advantage. If this were to occur, it would reasonably be expected to compromise the department's future financial interests in seeking to obtain the best value for money through the competitive tendering process.

For the reasons outlined above, I have decided that the parts of document 1 marked 's47D' in the schedule are conditionally exempt from disclosure under section 47D of the FOI Act. Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

5. Section 47E - Documents affecting certain operations of agencies

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure 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 or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 47E(b)

Paragraph 6.89 of the FOI Guidelines states that the prejudicial effect could be regarded as one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes.

I am satisfied that the effect of disclosing the parts of document 1 marked 's47E(b)' in the schedule would prejudice the attainment of the objects of particular assessments conducted or to be conducted by the department and that this prejudicial effect would cause bias or change to the expected results, which in turn would lead to detrimental and/or disadvantageous outcomes to those assessments.

Paragraph 6.97 of the FOI Guidelines sets out circumstances where the AAT has accepted that disclosure of a testing method may prejudice the method, including:

- permitting analysis of responses to tests or examinations or information gathered during a test, examination or audit
- facilitating cheating, fraudulent or deceptive conduct by those being tested, examined or audited.

I am satisfied that material marked '47E(b)' relates to the evaluation of the comparative value and merit of parties seeking to tender services under contract arrangements.

I am satisfied that disclosing parts of the document 1 would prejudice the attainment of the objects of a tender evaluation conducted by the department, and that the prejudicial effect would change to the expected results. If this were to occur, I am satisfied that this would prevent the assessment panel from making robust value for money assessments on tender applications.

I am satisfied that a precedent of disclosure of information relating to assessments of tenders would, or could reasonably be expected to, have a substantial adverse effect on the operations of the department, as it would discourage panel members in future procurement processes from making full and candid assessments. I consider that it is reasonably likely that such a precedent would encourage panel members to address their comments to audiences and with a purpose other than those intended. I am satisfied that such an outcome would undermine the effectiveness of assessment processes in the future.

Section 47E(d)

Paragraph 6.84 of the FOI Guidelines states that section 47E conditionally exempts a document where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain identified agency operations.

Examples of agency operations provided in paragraph 6.113 of the FOI Guidelines indicate that use of 47E(d) may be appropriate where disclosure of the information would:

- result in the need to make substantial changes to procedures to avoid jeopardising the effectiveness or methods and procedures used by the agency

- prejudice of the ability of an agency to perform its statutory, regulatory or public safety functions.

Paragraph 6.112 of the FOI Guidelines states that an agency's operations may not be substantially adversely affected if the disclosure would, or could reasonably be expected to, lead to a change in the agency's processes that would enable those processes to be more efficient.

Paragraph 6.115 of the FOI Guidelines state that the predicted effect of disclosure must bear on the department's 'proper and efficient' operations, that is, the department is undertaking its expected activities in an expected manner. Where disclosure of the documents reveals unlawful activities or inefficiencies, this element of the conditional exemption will not be met and the conditional exemption will not apply.

You have requested access to documents that contain information financial information relating to CN4085822.

I am satisfied that parts of document 1 marked 's47E(d)' in the schedule contain information, namely evaluation against specified criteria and risk management processes, the disclosure of which would, or could reasonably be expected to, have a substantial and an unreasonable effect on the department's proper and efficient operations.

The disclosure of procurement costing information used by the department would have an adverse effect on the department's ability to negotiate and/or manage future procurements or orders to obtain best value for the department. Any impediment to the ability of the department to obtain value for money contracts for services would have a substantial adverse effect on the proper and efficient conduct of the department's operations.

The disclosure of risk management processes would, or could reasonably be expected to, impact and impede the efficiency and effectiveness of the department's methods of managing potential risks to its operations. If this information were disclosed, I am satisfied that the measures put in place to mitigate those risks would cease to be effective. If this were to occur, the department would need to develop new risk ratings and mitigations, at significant financial and operational cost. Any such result would have a substantial adverse effect on the proper and efficient conduct of the department.

For the reasons outlined above, I have decided that parts document 1 are conditionally exempt from disclosure under section 47E of the FOI Act.

In forming this decision, I am satisfied the material marked 's47E(b)' and 's47E(d)' in the schedule contained in document 1 relates to operational activities that are being undertaken in an expected and lawful manner, and that release of this information would not reveal inefficiencies in the way in which the department conducts those operational activities.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

6. Section 47F – Documents affecting personal privacy

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal Information

Personal information has the same meaning as in the Privacy Act. Specifically, 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 whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

Paragraph 6.125 of the FOI Guidelines states that personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

Paragraph 6.132 of the FOI Guidelines states that an individual is a natural person and does not include a corporation, trust, body politic or incorporated association.

I am satisfied that parts of the document 1 marked 's47F' in the schedule include personal information, such as individuals' names and signatures.

Unreasonable Disclosure of Personal Information

Subsection 47F(2) of the FOI Act provides that in determining whether the disclosure would involve the unreasonable disclosure of personal information, I 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.

Paragraph 6.133 of the FOI Guidelines states that:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

I note that the AAT, in *Re Chandra and Minister for Immigration and Ethnic Affairs [1984] ATA 437* at paragraph 51-52, stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the

information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

Paragraphs 6.137 and 6.138 of the FOI Guidelines state:

6.137 Key factors for determining whether disclosure is unreasonable include:

- the author of the document is identifiable
- the documents contain third party personal information
- release of the documents would cause stress on the third party
- no public purpose would be achieved through release

6.138 As discussed in the leading s 47F IC review decision of 'FG' and National Archives of Australia [2015] AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity

I am satisfied that the disclosure of personal information contained within document 1 would, in the circumstances, constitute an unreasonable disclosure of personal information for the following reasons:

- the individuals whose personal information is contained in the documents are identifiable
- release of this information would cause anxiety to the individuals concerned
- no further public purpose would be achieved through the release of the personal information noting that the personal information is included in the document as a result of their employment circumstance
- the information is current and has not lost its sensitivity through the passage of time
- the individuals would not expect the information to be placed in the public domain, and detriment may be caused to the individuals to whom the information relates, and

- the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

For the reasons outlined above, I have decided that the parts of document 1 marked 's47F' in the schedule are conditionally exempt from disclosure under section 47F of the FOI Act.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

7. Section 47G - Business information

Section 47G of the FOI Act provides that a document is conditionally exempt if its disclosure 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.

Business information

Paragraph 6.177 of the FOI Guidelines states that the conditionally exempt information must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking.

Paragraph 6.191 of the FOI Guidelines states that the use of the term 'business or professional affairs' distinguishes an individual's personal or private affairs and an organisation's internal affairs. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Paragraph 6.193 of the FOI Guidelines states that 'profession' is not static and is clearly intended to cover the work activities of a person who is admitted to a recognised profession and who ordinarily offers professional services to the public for a fee.

The parts of document 1 marked 's47G' in the schedule contain business affairs information that is relevant to the business, commercial or financial affairs of a number of organisations, namely the names, details and tender submissions of tenderers for the contract. This information is relevant to the profitability and financial viability of

those organisations or undertaking and does not relate to their private or internal affairs.

As such, I am satisfied that this information is business information.

Unreasonable adverse effect of disclosure

Paragraph 6.184 of the FOI Guidelines states that the presence of 'unreasonably' in subsection 47G(1) implies a need to balance public and private interests. The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. I must therefore balance the public and private interest factors to decide whether disclosure is unreasonable for the purposes of paragraph 47G(1)(a); but this does not amount to the public interest test of subsection 11A(5) which follows later in the decision process.

Paragraph 6.185 of the FOI Guidelines goes on to state that the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect. I must balance the public interest against a private interest of the affected third parties, preserving the profitability of a business.

I am satisfied that the disclosure of the business affairs information would result in an adverse effect on the business, commercial or financial affairs of those organisations. Disclosure of the information would cause potential harm to reputation of the organisations from unsuccessful submission. I have also had regard to the public and private interest factors, and I am satisfied that the preservation of the names of the affected third-party business outweighs the public interest in the disclosure of this information.

In making my decision, I have consulted with the affected third parties regarding the relevant business affairs information, and I have considered any concerns raised.

For the reasons outlined above, I have decided that parts of document 1 marked 's47G' in the schedule are conditionally exempt from disclosure under section 47G of the FOI Act.

Where a document is found to be conditionally exempt, the department must give access to that document unless access to the document at this time would, on balance, be contrary to the public interest. I have addressed the public interest considerations below.

8. Disclosure is not in the public interest

Pursuant to subsection 11A(5) of the FOI Act, the department must give access to conditionally exempt documents unless access to the documents at that time would, on balance, be contrary to the public interest. I have therefore considered whether disclosure of the documents would be contrary to the public interest.

Paragraph 6.5 of the FOI Guidelines states:

The public interest test is considered to be:

- something that is of serious concern or benefit to the public, not merely of individual interest
- not something of interest to the public, but in the interest of the public
- not a static concept, where it lies in a particular matter will often depend on a balancing of interests
- necessarily broad and non-specific and
- relates to matters of common concern or relevance to all members of the public, or a substantial section of the public.

Factors favouring disclosure

Section 11B of the FOI Act provides that factors favouring access to documents in the public interest include whether access to the documents would do any of the following:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)
- inform debate on a matter of public importance
- promote effective oversight of public expenditure, or
- allow a person to access his or her own personal information.

Having regard to the above, I consider that disclosure of the conditionally exempt information at this time:

- would provide access to documents held by an agency of the Commonwealth which would promote the objects of the FOI Act by providing the Australian community with access to information held by the Australian Government.
- would not inform debate on a matter of public importance
- would promote effective oversight of public expenditure, and
- would not allow you access to your own personal information.

Factors weighing against disclosure

I consider that the following public interest factors weigh against disclosure of the conditionally exempt information at this time, on the basis that disclosure:

s47D – financial or property interests of the Commonwealth

- would compromise the department's future financial interest in seeking to obtain the best value for money through a competitive tendering process for

contracts. Any impediment to the ability of the department to obtain best value for money is against the public interest.

s47E – operations of an agency

- could reasonably be expected to prejudice the effectiveness of tender evaluation procedures. Any impediment to the ability of the department to conduct robust, accurate, fair and impartial evaluations is against the public interest.
- could reasonably be expected to prejudice the department's ability to obtain confidential information as part of a tender process. Any impediment to the ability of the department to obtain and consider relevant information as part of a tender process is against the public interest.
- could reasonably be expected to prejudice the competitive commercial activities of the department, including its ability to enter into contracts that provide best value for money. Any impediment to the ability of the department to achieve best value for money is against the public interest.

s47F – personal information

- could reasonably be expected to prejudice the protection of the relevant individuals' right to personal privacy, noting that the substance of the documents has been released to you and disclosure of the personal information would not provide you with any further insight into the workings of government.
- would not achieve any public purpose and, on balance, would harm the individuals' right to personal privacy.

s47G – business information

- would have an unreasonable adverse effect on businesses that seek contracts with the department.
- could reasonably be expected to prejudice the department's ability to obtain confidential information from contractors and service providers. Any impediment to the ability of the department to obtain information to advance its programs would be contrary to the public interest.
- could reasonably be expected to prejudice an agency's ability to obtain contracted services in the future. Any impediment to the ability of the agency to support its operational functions would be contrary to the public interest.

In making my decision, I have not taken into account any of the irrelevant factors set out in subsection 11B(4) of the FOI Act, 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.

Conclusion

For the reasons set out above, after weighing all public interest factors for and against disclosure, I have decided that, on balance, disclosure of the conditionally exemption information would be contrary to the public interest. I am satisfied that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information.

ATTACHMENT C.

YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for a review.

Internal review

You can request internal review within 30 days of you receiving this decision. 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 the grounds on which you believe that the original decision should be changed.

Applications for internal review can be made by:

Email: FOI@health.gov.au

Mail: FOI Unit (MDP 516)
Department of Health and Aged Care
GPO Box 9848
CANBERRA ACT 2601

If you choose to seek an internal review, you will also have a right to apply for Information Commissioner review (IC review) of the internal review decision once it has been provided to you.

Information Commissioner review or complaint

You have the right to seek Information Commissioner (IC) review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

While there is no particular form required to make a complaint to the OAIC, the complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify the Department of Health and Aged Care as the agency about which you are complaining.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at www.oaic.gov.au/freedom-of-information/reviews-and-complaints/
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available on the OAIC website here: www.oaic.gov.au/freedom-of-information/foi-review-process.

Complaint

If you are dissatisfied with action taken by the department, you may also make a complaint directly to the department.

Complaints to the department are covered by the department's privacy policy. A form for lodging a complaint directly to the department is available on the department's website here: www.health.gov.au/about-us/contact-us/complaints