



Australian Government
Department of Immigration and Citizenship

02 September 2011

Mr Paul Farrell

In reply please quote:

FOI Request FA11/03/00130

File Number ADF2011/5574

Dear Farrell

Freedom of Information request – Decision on access request

This letter refers to your request received on 14 December 2010, seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

- all documents and correspondence relating to Serco's tendering and retention of the Immigration Detention Centre contract, including the contract itself.

Falling within the scope of your request is the Executed version of the Detention Services Contract between DIAC and Serco. This decision refers only to this document. A further decision on the remaining documents falling within the scope of your request will be made.

I also refer to your email dated 1 September 2011 in which you formally agreed to withdraw the blueprints from the scope of the above request.

I apologise for the delay in responding.

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6 Chan Street Belconnen ACT 2617

PO Box 25 BELCONNEN ACT 2616 • Telephone (02) 6264 1111 • Facsimile (02) 6225 6970 • Website: www.immi.gov.au

Decision

My decision is to partially release a copy of the documents requested. A statement of reasons for my decision is in the attached Decision Record.

The documents considered in my decision are listed in the Schedule of Documents, which should be read with the attached Decision Record.

Due to the nature of the documents and the potential impact which they would have on Serco's business, consultation is being undertaken in accordance with section 27 of the FOI Act. Serco has made a number of objections to the release of information within the scope of your request.

Much of this information cannot be provided to you at this stage, because it is subject to Serco exercising their review rights. At review a decision could be made to affirm my decision or to vary my decision, exempting some or all of the information which Serco has objected to releasing. A schedule of documents affected by Serco's review rights is attached.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department of a primary decision to refuse access to documents you have requested.

If you wish to make a request for internal review this must be sent within 30 days of being notified of the decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and every effort will be made to notify you of the internal review decision within 30 days of receipt of the request.

Applications for review should be sent to:

Post FOI and Privacy Policy Section
 Department of Immigration and Citizenship
 PO Box 25
 BELCONNEN ACT 2616

Email FOI@immi.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Australian Information Commissioner for a review of my decision. You must apply in writing and you can lodge your application in one of the following ways:

Online	www.oaic.gov.au
Post	GPO Box 2999, Canberra ACT 2601
Fax	+61 2 9284 9666
Email	enquiries@oaic.gov.au
In person	Level 3, 25 National Circuit Forrest, ACT, or at Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW

An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision of which you are seeking review, and your contact details. You should also set out the reasons why you are seeking a review of the decision.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act.

Your complaint must be in writing and must specify the agency you are complaining about. You can send your complaint to the Australian Information Commissioner using the details above. A complaint form is also available at www.oaic.gov.au.

If you are unhappy with the department's decision about giving or refusing access to documents, you should ask for the decision to be reviewed. This is a separate process which has been outlined earlier in this letter.

Client Service Charter

Our Client Service Charter explains our service commitment to you. We are committed to service delivery that is timely, open and accountable, and responsive to your needs. The Charter explains how you can help us and how you can provide feedback or make a complaint. You can read our Client Service Charter on our website, or in a printed copy available from any of our offices.

Service satisfaction

The department remains committed to ensuring that all clients, both in Australia and overseas, receive not only fair and reasonable treatment, but also an efficient standard of service that is sensitive to each client's needs.

To provide a compliment, complaint or suggestion to the department you can:

- telephone the Global Feedback Unit (toll-free within Australia) on 13 31 77 during business hours
- complete a feedback form online at www.immi.gov.au
- write to:
The Manager
Global Feedback Unit (DIAC)
GPO Box 241
MELBOURNE VIC 3001
AUSTRALIA
- contact us directly through any of our offices.

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Chris Hodges
Position Number 60007431
Assistant Secretary
Governance and Audit Branch
Governance and Legal Division
Department of Immigration and Citizenship

Attachment(s)

Decision Record
Schedule of documents
Schedule of documents subject to objections under s.27
Documents released



Australian Government
Department of Immigration and Citizenship

DECISION RECORD

Client Details

Mr Paul Farrell
FOI Request FA11/03/00130
File Number ADF2011/5574

Documents in scope

1. Detention Services Contract, Immigration Detention Centres Volume 1 – Executed Version signed on 29 June 2009 (547 folios)
2. Detention Services Contract, Immigration Detention Centres Volume 2 – Executed Version signed on 29 June 2009 (427 folios)

Information considered

I am a delegated decision maker under Section 23 of the *Freedom of Information Act 1982* (the FOI Act). In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Office of the Australian Information Commissioner guidelines;
- Departmental files and/or documents (as identified above).

In reaching my decision I have paid due regard to the Government's policy of promoting a "pro-disclosure" culture across government.

Reasons for decision

I have considered the document within the scope of your request and released in full, or applied exemptions in whole or in part to documents as detailed in the Schedule of Documents. You should read the Schedule in conjunction with the releases and exemptions below.

Section 22 - Deletion of exempt matter or irrelevant material

(1) *Where:*

(a) *an agency or Minister decides:*

- (i) *not to grant a request for access to a document on the ground that it is an exempt document; or*
- (ii) *that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and*

(b) *it is possible for the agency or Minister to make a copy of the document with such deletions that the copy:*

- (i) *would not be an exempt document; and*
- (ii) *would not disclose such information; and*

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- (c) *it is reasonably practicable for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy; the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.*

Section 22(1)(a)(ii)

It is my decision that the documents to which section 22(1)(a)(ii) applies are irrelevant to the scope of your FOI request. The only documents which I have removed from the Serco contract as irrelevant were blueprints of immigration detention facilities as outlined in my Schedule of documents. These blueprints were removed from the scope of your request with your agreement on 19 August 2011.

Section 22 – Deletion of exempt matter

I have used the power set out in section 22 to delete exempt material. In my opinion, documents which I have deleted in part contain information that is exempt under sections 47, 47D, 47E or 47F of the FOI Act. Justification for the exemptions is set out in the following paragraphs.

Section 47 - Documents disclosing trade secrets or commercially valuable information

- (1) *A document is an exempt document if its disclosure under this Act would disclose:*
- (a) *trade secrets; or*
 - (b) *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.*
- (2) *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 person acting on behalf of the organisation.*
- (3) *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 or a State or by a local government authority.*

I consider that the information within the documents which I am exempting is information which holds a significant commercial value that could reasonably be expected to be diminished if the information were disclosed. The department seeks the information provided by Serco to fulfil its obligations under the *Migration Act 1958*. The information has been supplied in the expectation that it will only be used for the purposes for which it was supplied and would be treated as confidential.

In accordance with the FOI Act and Office of the Australian Information Commissioner's Guidelines, I consider that the information provided by Serco has a commercial value that would be, or could reasonably be expected, to be destroyed or diminished if the information were disclosed.

The information which I consider exempt is material that could reasonably be expected to be diminished in value if it became public knowledge. The commercial information is not known outside of Serco and/or DIAC. If such information were to be disclosed, Serco's competitors would be likely to use the information to gain a competitive advantage against Serco, which would diminish its value.

Serco have advised that the value of the information that is subject to this exemption would be diminished if disclosed, considering the specificity of the information and its ability to be utilised by industry competitors. I consider that if a competitor was given an opportunity to peruse parts of the contract, specifically the parts that contain commercially valuable information, those businesses would utilise that information to the fullest extent within the industry. This could reasonably be expected to result in its value being diminished.

In addition there is a second business entity about which the department holds information of a commercial value in this contract. I have decided that disclosure would, or could reasonably be expected, to destroy or diminish its value if the information were disclosed. This information is contained within the Performance Securities section of the contract

Section 47D – Public interest conditional exemptions – financial or property interests of the Commonwealth or Norfolk Island

A document is conditionally exempt if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Commonwealth, of Norfolk Island or of an agency.

The material which I have considered to be exempt under section 47D contains information which, if disclosed, would have a substantial adverse effect on the property interests of the Commonwealth.

The information which I have decided to be conditionally exempt in accordance with section 47D of the FOI Act consists of the value of DIAC's assets through the immigration detention centre network, including, but not limited to the replacement value for client accommodation, client amenities, necessary equipment and security systems.

This information was collated to inform contractual arrangements with Serco and for the purposes of ensuring that adequate and appropriate insurance has been procured for DIAC's assets. The substantial adverse effects of the disclosure of the value of these assets are that such a disclosure would limit the capacity both for the department to assess tenders for the immigration detention network adequately to ensure value for money, and also for the department to procure appropriate insurance for the immigration detention network at a reasonable value in an open procurement process.

Although the assets are individually listed, DIAC's assets need to be taken here as an entirety. The individual items listed here, when taken as an entirety, form a mosaic, the effect of which is a picture of the sum of the parts. I consider this to be an exempt document; and have applied the exemption throughout the document to the values of individual assets.

I have taken into account the following factors in favour of disclosure when considering the public interest in providing information which is held by the Government:

- There is a general public interest in making information held by the Government accessible to the public;
- An expectation that Government spending should be open and accountable; and
- The need for openness and accountability of the department's operations.

On the other hand I considered the following factors in favour of non-disclosure:

- The expectation that Government departments will ensure that reasonable steps are taken to ensure that public money is spent efficiently; and
- The documents contain information which, if disclosed, could be used by current and future contracted parties to the department to weaken, compromise and/or undermine the conduct of the department's processes; this would lead to difficulty for the department in running efficient and cost effective tender processes in the future, which would not be in the public interest.

On balance, I consider that the information that I have exempted under section 47D, if disclosed, would have a substantial adverse effect on the financial and property interests of the department and that, on balance disclosure would be detrimental to the public interest.

Section 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 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.*

I have applied section 47E(d) to information that affects several issues of importance to the department's ability to successfully conduct tender processes and to enter into contractual arrangements with businesses.

In order to successfully manage relationships with third parties that the department contracts with to perform services on its behalf, a level of confidence is required by our contracted partners concerning the way in which the department will manage sensitive contractual information.

Should the department disclose or alter the way it handles information created in order to efficiently execute and manage a contract, there is a reasonable expectation that third parties will be hesitant to engage in a tender process with this department in the future. Should the department alter the way we conduct our tender processes and the way we execute contracts, our tendering processes will become inefficient and less cost-effective. It is likely that such action would also lead to a diminished pool of businesses willing to tender. In addition, the Commonwealth would incur greater costs in order to successfully find an appropriate bidder.

I have taken into account the following factors in favour of disclosure when considering the public interest in providing information which is held by the Government:

- There is a general public interest in making information held by the Government accessible to the public;
- The need for openness and accountability of the department's operations.

On the other hand I considered the following factors in favour of non-disclosure:

- The documents contain information which, if disclosed, could be used by current and future contracted parties to the department to weaken, compromise and undermine the conduct of the department's processes; this would lead to substantial difficulty in running efficient and cost effective tender processes in the future, which would not be in the public interest.
- Disclosure of individual pieces of information, which by themselves appear innocuous, but when accumulated and aggregated through several documents, would reveal strengths and weaknesses in the department's position; this would substantially weaken and undermine the department's ability to discharge its contractual responsibilities, which would not be in the public interest.

On balance, I consider that the public interest in the non-disclosure of the documents outweighs the public interest in disclosing the documents. Accordingly I have decided that the documents are exempt in whole or in part under section 47E(d) of the FOI Act.

Section 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.*

The material which I have decided is exempt under section 47F(1) contains information concerning third parties. I consider that it is not reasonable to expect that the information concerning these individuals would be released under FOI.

Having formed the opinion that the document is of a kind to which section 47F(1) does apply in part, I am required to consider whether disclosure of the document would be unreasonable having regard, in particular, to the general interest in the public obtaining access to Government-held information under the FOI Act.

The information contained within the exempted document relates to third parties. Although there is a general right of access to information which is held by the Government, I consider that the public interest in maintaining an individual's right to privacy of their personal information held by the department outweighs the public interest in favour of the release of that information.

Yours sincerely



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Governance and Audit Branch
Governance and Legal Division
Department of Immigration and Citizenship

SCHEDULE OF DOCUMENTS TO DECISION RECORD

In reply please quote:

Client Name Paul Farrell
 FOI Request FA 10/03/00130
 File Number ADF2011/5574

1. Volume 1 (containing 547 folios)

Folios	Author	Description	Decision	FOI Legislation
1-26	Serco & DIAC		Release in full	
27-28	Serco & DIAC	Liquidated damages	Exempt in part	s. 47(1)(b), s. 47E(d)
29-86	Serco & DIAC		Release in full	
87-89	Serco & DIAC	Limitation of liability	Exempt in part	s. 47(1)(b), s. 47E(d)
90-91	Serco & DIAC		Release in full	
92-96	Serco & DIAC	Adjustments for property insurance, uninsurable risks, unconditional financial undertaking, performance guarantee	Exempt in part	s. 47(1)(b), s. 47E(d)
97-157	Serco & DIAC		Release in full	
158	Serco & DIAC	Blueprint of facility	Out of scope	s. 22(1)(a)(ii)
159	Serco & DIAC		Release in full	
160-179	Serco & DIAC	Blueprints of facilities	Out of scope	s. 22(1)(a)(ii)
180	Serco & DIAC		Release in full	
181-208	Serco & DIAC	Blueprints of facilities	Out of scope	s. 22(1)(a)(ii)
209	Serco & DIAC		Release in full	
210	Serco & DIAC	Blueprint of facility	Out of scope	s. 22(1)(a)(ii)
211	Serco & DIAC		Release in full	
212-235	Serco & DIAC	Blueprints of facilities	Out of scope	s. 22(1)(a)(ii)
236	Serco & DIAC		Release in full	
237	Serco & DIAC	Blueprint of facility	Out of scope	s. 22(1)(a)(ii)
238	Serco & DIAC		Release in full	
239	Serco & DIAC	Blueprint of facility	Out of scope	s. 22(1)(a)(ii)
240-302	Serco & DIAC		Release in full	
303	Serco & DIAC	Security systems	Consultation	s. 27
304-328	Serco & DIAC		Release in full	
329	Serco & DIAC	Security systems	Consultation	s. 27
330-391	Serco & DIAC		Release in full	
392	Serco & DIAC	Checks to verify all people in detention are present and safe	Consultation	s. 27
393	Serco & DIAC		Release in full	
394-395	Serco & DIAC	Perimeter security	Consultation	s. 27
396-407	Serco & DIAC		Release in full	
408	Serco & DIAC	Checks to verify all people in detention are present and safe	Consultation	s. 27
409-410	Serco & DIAC		Release in full	
411	Serco & DIAC	Perimeter security	Consultation	s. 27

412-453	Serco & DIAC		Release in full	
454	Serco & DIAC	Calculation of incentive payments	Consultation	s. 27
454	Serco & DIAC	Overview of abatement indicator metrics	Consultation	s. 27
455-456	Serco & DIAC	Figure 2 – Summary of abatement indicator metrics	Consultation	s. 27
457-458	Serco & DIAC		Release in full	
459-460	Serco & DIAC	Application of abatements at facilities of varying operational status	Consultation	s. 27
461-466	Serco & DIAC	Calculation of abatements	Consultation	s. 27
467-472	Serco & DIAC		Release in full	
473-522	Serco & DIAC	Annexure A - Abatement indicator definition	Consultation	s. 27
523-526	Serco & DIAC	Annexure B – Example abatement calculation	Consultation	s. 27
527-547	Serco & DIAC		Release in full	

2. Volume 2 (containing 427 folios)

Folios	Author	Description	Decision	FOI Legislation
1-2	Serco & DIAC		Release in full	
3-9	Serco & DIAC	Detention services fee	Consultation	s. 27
10	Serco & DIAC	Detention services fee and milestone payment	Exempt in part and consultation	s. 27, s. 47(1)(b), s. 47E(d)
11-13	Serco & DIAC	Detention services fee	Consultation	s. 27
14	Serco & DIAC		Release in full	
15-42	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
43	Serco & DIAC		Release in full	
44-52	Serco & DIAC	Dollar values and percentages, text concerning insurance cover	Exempt in part	s. 47(1)(b), s. 47E(d)
53	Serco & DIAC		Release in full	
54-81	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
82	Serco & DIAC		Release in full	
83-110	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
111	Serco & DIAC		Release in full	
112-139	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
140	Serco & DIAC		Release in full	
141-155	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
156	Serco & DIAC		Release in full	
157-184	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)

185	Serco & DIAC		Release in full	
186-200	Serco & DIAC	Dollar values and percentages	Exempt in part	s. 47(1)(b), s. 47E(d)
201-211	Serco & DIAC		Release in full	
212	Serco & DIAC	Dollar values	Exempt in part	s. 47(1)(b), s. 47E(d)
213	Serco & DIAC		Release in full	
214	Serco & DIAC	Names and positions of individuals within Serco	Release in part and consultation	s. 27, s. 47F(1)
215	Serco & DIAC		Release in full	
216-237	Serco & DIAC	Replacement value of assets	Release in part	s. 47D, s. 47E(d)
238-255	Serco & DIAC	Performance Securities	Release in part	s. 47(1)(b), s. 47E(d)
256-268	Serco & DIAC		Release in full	
269-270	Serco & DIAC	Insurance / Indemnity amounts	Release in part	s. 47(1)(b), s. 47E(d)
271-292	Serco & DIAC		Release in full	
293-402	Serco & DIAC	DIAC Loose assets – dollar values	Exempt in part	s. 47D, s. 47E(d)
403-427	Serco & DIAC		Release in full	