



3 September 2015

In reply please quote:

FOI Request FA 15/01/01292
File Number ADF2015/3535

Freedom of Information request – access decision - third party internal review

This letter refers to your request received on 23 January 2015 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I request any and all independent Value For Money Analyses for the Wickham Point Detention Centre contracts with Trepang Services, Wickham Point Development and any trustees affiliated with these businesses.

The purpose of this letter is to notify you of the decision made by the Department of Immigration and Border Protection (the Department) on the third party internal review request.

Original Decision issued 20 July 2015

In its original decision, the Department identified three documents that fell within the scope of your request. The decision was to:

- Release two documents in part with deletions
- Release one document in part with deletions (this document was subject to review or appeal opportunities and as such was not released to you on this date)

I note that you sought an internal review on 21 July 2015 in which you requested that the Department review its decision on access to documents released to you on 20 July 2015.

The Department provided you with an internal review decision regarding these documents on 19 August 2015.

For your information, the two documents released on 20 July 2015 and then subject to your internal review request are not subject to the third party internal review request.

Third party internal review

During a consultation under s.27 of the FOI Act a third party raised objections to the release of their information. The Department provided the third party with a notice of the original decision on 20 July 2015.

On 10 August 2015 the third party sought an internal review of the decision made on document number 3, as listed in the original schedule.

Therefore, the document subject to the third party internal review request is:

3. Electronic record dated 31 January 2011 – containing 6 folios

Decision on third party internal review

The Department has finalised a decision on the third party internal review. The decision is as follows:

- Release one document in part with deletions

The reasons for the decision include an exemption, in part, to specific business information under s.47G(1)(a)(ii). In light of the submission provided by the third party the decision maker was satisfied that the claimed exemption was met.

Consideration was then given to the public interest test. The decision maker was satisfied that the release of the specific business information, on balance, would be contrary to the public interest.

Section 22 - Deletion of exempt or irrelevant material

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.

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). 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.

The schedule for this document is at Attachment A for your reference. The schedule sets out the decision on access and where appropriate refers to various sections of the FOI Act.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of my 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 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:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@border.gov.au

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

How to make a complaint about the handling of this 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. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, you may contact the Department at foi@border.gov.au.

Yours sincerely

Freedom of Information Section
Department of Immigration and Border Protection

Email foi@border.gov.au

Attachments

- Attachment A - Schedule of Documents
- Attachment B – Extract of relevant legislation
- Documents released under the FOI Act



Attachment A

SCHEDULE OF DOCUMENTS TO DECISION RECORD

Request Details

FOI Request FA 15/01/01292
File Number ADF2015/3535

- 3. Electronic record:** Preliminary project assessment – dated Monday, 31 January 2011 - containing 6 folios

Folio	Description	Decision	Legislation
1-6	Preliminary project assessment Remote location detention centre	Exempt in part	s 47G(1)(a) s 22(1)(a)(ii)

Attachment C

Extract of relevant legislation

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.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

27 Consultation—business documents

Scope

- (1) This section applies if:
 - (a) a request is made to an agency or Minister for access to a document containing information (***business information***) covered by subsection (2) in respect of a person, organisation or undertaking; and
 - (b) it appears to the agency or Minister that the person, organisation or proprietor of the undertaking (the ***person or organisation concerned***) might reasonably wish to make a contention (the ***exemption contention***) that:
 - (i) the document is exempt under section 47 (trade secrets etc.); or
 - (ii) the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).
- (2) This subsection covers the following information:
 - (a) in relation to a person—information about the person’s business or professional affairs;
 - (b) in relation to an organisation or undertaking—information about the business, commercial or financial affairs of the organisation or undertaking.
- (3) In determining, for the purposes of paragraph (1)(b), whether the person or organisation concerned might reasonably wish to make an exemption contention because of business information in a document, the agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person, organisation or undertaking is known to be associated with the matters dealt with in the information;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

Opportunity to make submissions

- (4) The agency or Minister must not decide to give access to the document unless:
 - (a) the person or organisation concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and
 - (b) the agency or the Minister has regard to any submissions so made.
- (5) However, subsection (4) only applies if it is reasonably practicable for the agency or Minister to give the person or organisation concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).

Notice of decision to give access

- (6) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:
 - (a) the person or organisation concerned;
 - (b) the applicant.

Access not to be given until review or appeal opportunities have run out

- (7) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person or organisation concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have **run out**, see subsection 4(1).

Notice and stay of decision not to apply unless submission made in support of exemption contention

- (8) Subsections (6) and (7) do not apply unless the person or organisation concerned makes a submission in support of the exemption contention as allowed under paragraph (4)(a).

Edited copies and business information

- (9) This section applies:
- (a) in relation to an edited copy of a document—in the same way as it applies to the document; and
 - (b) in relation to a document containing business information—to the extent to which the document contains such information.

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).

Monday, 31 January 2011

Department of Immigration and Citizenship
PO Box 25
BELCONNEN ACT 2616

Attention: [REDACTED] s 22(1)(a)(ii)

Phone: [REDACTED] s 22(1)(a)(ii)

6 Pages

Email: [REDACTED] s 22(1)(a)(ii)

**PRELIMINARY PROJECT ASSESSMENT
REMOTE LOCATION DETENTION CENTRE**

Thank you for the opportunity to provide these comments on the project feasibility of this scheme.

This assessment is set out below under the following headings:

1. Project details and assessment framework
2. Estimate of Capital Costs and Revenue
3. Assessment
4. Conclusions

We report as follow:

1. PROJECT DETAILS & ASSESSMENT FRAMEWORK

We have based our assessment and calculations the site diagram provide to us and our knowledge of project costs for recent similar projects. Whilst the construction methods proposed might be slightly different, we anticipate market prices for works of this nature to be within a similar range.

While we have not had access to a detailed schedule of areas, and scale of the diagram of the site layout does not permit an accurate take-off of areas, we believe it is acceptable to you that we have based our assessment on appropriate building areas applicable on other similar projects.

In preparing this assessment, we have adopted the assumption for comparative purposes that if an alternative Camp was constructed, Commonwealth land would be available for use at zero commercial cost.

We recognise that such suitable sites might not indeed be readily available.

This is a high level, preliminary assessment and contains rudimentarily estimates and approximations. Whilst we have extensive experience and had long term involvement in the costing and construction of Detention Facilities for the Department of Immigration and Citizenship, we wish to record that we do not have a detailed knowledge of this particular site and the risks and development opportunities associated with it.

2. ESTIMATE OF CAPITAL COSTS

We estimate the Capital Costs for these works to be in the order of \$159,500,000 including GST, as calculated and detailed in the attached Schedule A.

We understand that the lease costs under consideration on a rate per two person bedroom basis for the completed scheme are to be \$88 per person per day where there is a 3 year commitment and \$113 per day on a 2 year minimum lease.

3. ASSESSMENT

We have prepared an assessment of these rates under consideration on the two similar but separate analyses.

3.1. Residual Facility Basis

In this analysis, a reasonable residual value for the facility is estimated and is adjusted for reasonable facility make good costs at the end of the period and for direct maintenance costs over the life of the lease.

This indicates the following daily room rates:

Two Year Period:	\$ 157.44
Three Year Period:	\$ 109.59

3.2. Site Make Good and Salvage

In this analysis, a reasonable salvage value for the buildings is estimated and is adjusted for reasonable site make good costs at the end of the period and for direct maintenance costs over the life of the lease.

This indicates the following daily room rates:

Two Year Period:	\$ 135.16
Three Year Period:	\$ 112.51

4. CONCLUSIONS & RECOMMENDATIONS

Our analysis certainly indicated that the rates under consideration appear most favourable to the Department.

A more detailed and accurate assess could be carried out. Whilst our review assesses the situation in broad terms only, we believe a more detailed study will yield similar indicators.

Indications are that changes to the lease period will impact substantially on the appropriate rental amount. The likely period of occupation of the facility should therefore receive significant consideration in reaching a decision in this regard, and when negotiating the rental terms for possible extension options to the lease.

Please let us know whether we can be of any further assistance in this regard.

For and on behalf of

s. 47G(1)(a)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Attachment: Capital Cost Estimate.
Analyses

s. 47G(1)(a)

REMOTE AREA IMMIGRATION DETENTION CENTRE
 PRELIMINARY PROJECT ASSESSMENT
 ESTIMATE OF CAPITAL COSTS
 SCHEDULE A

1.0	General Preliminaries Site establishment, transport, insurances, site accommodation, etc	\$ 20,500,000
2.0	Site Works Site preparation, earthworks, roads and footpaths, etc	\$ 13,200,000
3.0	Accommodation Buildings For 1,500 persons, two per room	\$ 28,600,000
4.0	Kitchen and Dining	\$ 13,900,000
5.0	Medical Medical and related facilities	\$ 2,100,000
6.0	Amenities Buildings	\$ 30,900,000
7.0	Processing	\$ 4,700,000
8.0	Sporting facilities and Recreation	\$ 2,800,000
9.0	Services Distribution and Reticulation	\$ 23,900,000
10.0	Fencing Perimeter and internal, excluding electronic security	\$ 4,400,000
		\$ 145,000,000
	Add: GST	10% \$ 14,500,000
	ESTIMATED TOTAL	\$ 159,500,000
	Includes design fees and contingencies	

Released by DIBP under the
 Freedom of Information Act 1982

REMOTE AREA IMMIGRATION DETENTION CENTRE

PRELIMINARY PROJECT ASSESSMENT

ANALYSIS :: SCHEDULE B
RESIDUAL FACILITY VALUE

2 YEARS

1.0	Estimate Capital Cost of the Works Per Schedule A		\$ 159,500,000
2.0	Estimate of Facility Residual Value Say 50%	\$	79,750,000
	Less: Estimated Facility Make Good Costs	\$	4,850,000
		\$	74,900,000
	Less:		
	Direct Buildings Maintenance costs		
	For 2 Years	\$	1,600,000
		\$	73,300,000
3.0	Net Residual		
	For 2 Years		\$ 86,200,000
	Therefore: For 1 Year		\$ 43,100,000
4.0	Thus: Rate per two person Room per day		\$ 157.44

3 YEARS

1.0	Estimate Capital Cost of the Works Per Schedule A		\$ 159,500,000
2.0	Estimate of Facility Residual Value Say 50%	\$	79,750,000
	Less: Estimated Facility Make Good Costs	\$	7,850,000
		\$	71,900,000
	Less:		
	Direct Buildings Maintenance costs		
	For 3 Years	\$	2,400,000
		\$	69,500,000
3.0	Net Residual		
	For 3 Years		\$ 90,000,000
	Therefore: For 1 Year		\$ 30,000,000
4.0	Thus: Rate per two person Room per day		\$ 109.59

REMOTE AREA IMMIGRATION DETENTION CENTRE

PRELIMINARY PROJECT ASSESSMENT

ANALYSIS :: SCHEDULE C
RESIDUAL BUILDINGS VALUE

2 YEARS

1.0	Estimate Capital Cost of the Works Per Schedule A		\$ 159,500,000
2.0	Estimated Buildings Salvage Value Say 70%	\$	111,650,000
	Less: Estimated Site Make Good Costs	\$	24,550,000
		\$	87,100,000
	Less:		
	Direct Buildings Maintenance costs		
	For 2 Years	\$	1,600,000
		\$	85,500,000
3.0	Net Residual		
	For 2 Years		\$ 74,000,000
	Therefore: For 1 Year		\$ 37,000,000
4.0	Thus: Rate per two person Room per day		\$ 135.16

3 YEARS

1.0	Estimate Capital Cost of the Works Per Schedule A		\$ 159,500,000
2.0	Buildings Salvage Value Value Say 60%	\$	95,700,000
	Less: Estimated Site Make Good Costs	\$	26,200,000
		\$	69,500,000
	Less:		
	Direct Buildings Maintenance costs		
	For 3 Years	\$	2,400,000
		\$	67,100,000
3.0	Net Residual		
	For 3 Years		\$ 92,400,000
	Therefore: For 1 Year		\$ 30,800,000
4.0	Thus: Rate per two person Room per day		\$ 112.51

Released by DIBP under the Freedom of Information Act 1982