

Senate Standing Committee on Environment and Communications
Answers to Senate Estimates Questions on Notice
Budget Estimates Hearings May 2011
Broadband, Communications and the Digital Economy Portfolio
Department of Broadband, Communications and the Digital Economy

Question No: 223

Program No. Legal Services Group

Hansard Ref: Page 78-79 (26/05/2011)

Topic: AusTender – FOI Processing and Advice

Senator Birmingham asked:

Senator BIRMINGHAM: Does each of these tenders relate to a single FOI application and its assessment?

Mr Markus: I do not have the document in front of me, but, generally, in recent times the particular purchase order—no, I could not say. I would have to take the question on notice.

Senator BIRMINGHAM: The 11 tenders that I have, which have come off the AusTender website, range in value from \$11,000 to \$77,000. Most are described as 'FOI processing and advice', although there are three variations to that. One is described as 'advice on FOI templates and guidelines'. That one sounds a little more general.

Mr Markus: Yes.

Senator BIRMINGHAM: Another is 'legal services for FOI 31-1011'. That one sounds like it is for a very specific application.

Mr Quinlivan: Yes, I think that would be right.

Senator BIRMINGHAM: Another one is described as 'miscellaneous FOI advice'. I am not sure how 'miscellaneous FOI advice' differs from 'FOI processing and advice', but I think that it reads that eight of them are probably for specific consideration and three are for miscellaneous services.

Mr Markus: Yes. It is difficult for me to give a categorical answer to that. These are cases where they are not tenders as such but individual purchase orders that have been issued to one or other of our panel firms for FOI work. In some cases, that may have been issued for a particular FOI request. In other cases—and I believe you have identified one—it was for general advice and assistance to us in reviewing our documentation, given the changes to the legislation. There may be other cases where we simply have opened a purchase order to cover the ad hoc advice that we seek from time to time. I believe we had a file like that with the Australian Government Solicitor at one stage as well. I am not sure of that miscellaneous one that you referred to, but I suspect that may be the case.

Senator BIRMINGHAM: I am not entirely clear why this department has found the new legislation to be so much more of a burden compared with other departments. There appears to be only one other department in the same time frame, the course of this year, that has sought advice. That was the Department of Infrastructure and Transport, which awarded a \$30,000 contract to Donna White for 'supporting public transport strategy FOI'. I am not quite sure what that is. FOI descriptions are often curious. I know that, to the Department of Climate Change and Energy Efficiency, I am a serial offender with regard to FOI applications related to the carbon tax regime and a whole range of factors there. I am equally a serial offender to the Murray-Darling Basin Authority. Be very grateful that I have not decided to come after you guys yet! It is others who have lodged all of these applications. But none of these other agencies have had to go and seek external assistance to deal with requests. Why in particular has your department?

Mr Markus: I cannot speak about what other departments are doing, but I certainly do know that, even under the act in former times, FOI requests could take up a significant part of the time of one

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of my in-house lawyers, for the major part of the week. These requests do take a lot of time, particularly where the documents may relate to the personal affairs of another person or the business affairs of another person. In those cases, there are mandatory consultation requirements and they do require a very detailed, often line-by-line, examination of the documents. There are some cases where it is relatively straightforward. But we are not dealing purely with matters that are an issue only within government, as it were; often the requests relate to the affairs of other people. We are obliged to go through quite exhaustive consultation processes on those matters. The decision on whether we go in-house or outsource depends on the resources and what our resourcing commitments are. Given the collection of circumstances that we have been facing in the last few months, in consultation with my colleagues I took the decision to outsource some of that work. We will continue to review that and continue to review whether that is the most cost-effective way of dealing with these issues.

Senator BIRMINGHAM: I assume most if not all of these applications relate to NBN matters.

Mr Markus: I do not know that that is correct, Senator. That may not necessarily be the case at all.

Senator BIRMINGHAM: When you look through what the contracts were for, if can you advise us whether they are related to specific applications, then what the general topic or issue of those applications, that would be appreciated.

Answer:

Except as listed below, the contracts published on the Austender website as at 26 May 2011, were to provide legal services in support of individual requests for access to documents. The exceptions are:

- Contract Notice Number 369365 which related to legal services requested in connection with five separate requests regarding ISP Filtering all made by the same applicant.
- Contract Notice Number 381617 related to two separate applications concerning the same NBN issue.
- Contract Notice Number 373000 was for assistance in reviewing FOI templates used to respond to applicants to ensure that practice was consistent with the new legislation.
- Contract Notice Number 375896 which related to general advice on when debts arise in the FOI charging process.

The other FOI requests, for which legal services were sought in separate contracts, were for documents relating to the following:

- Digital Switchover complaints in the Mildura/ Sunraysia region;
- a list of Departmental stakeholders, current reviews and inquiries, and consultancies concerning the general operations of the Department;
- communications between the Department and the South Australian Government or its Ministers;
- advice, analysis or briefings provided by DBCDE relevant to the decision to move to the FTTP process and establish the NBN Co after the collapse of the RFP FTTN process;
- the decision by Government to move from the building of a Fibre-to-the-Node NBN to a Fibre-to-the-Premises NBN Network;
- Viewer Access Satellite Television (VAST), and
- Casualties of Telstra (COTS).

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Question No: 224

Program No. Legal Services Group

Hansard ref: Page 80 (26/05/2011)

Topic: Contract Notice Number 364863

Senator Birmingham asked:

Senator BIRMINGHAM: For the contract notice number 364863 for FOI processing and advice to Minter Ellison, it is identified as being for a contract period from 11 February 2011 to 11 February 2011 for a contract value of \$22,000. Can you confirm whether that is correct and whether the department obtained \$22,000 worth of legal advice from Minter Ellison on FOI matters for a single day in February?

Mr Markus: I would be quite sure that that was not the case. That would seem to me to be some sort of error in the filling in of the details for the contracts form. I cannot imagine any circumstances where we would be paying \$22,000 for that kind of work for a single day.

Mr Quinlivan: But we will take that on notice, investigate and get back to you.

Mr Rizvi: Yes, we will take it on notice and provide that.

Senator BIRMINGHAM: Thank you. Obviously, if you can provide the other information that we have asked for, that would be appreciated. That is all I have on FOI matters.

Answer:

A contract was raised for \$22,000, including GST, for contract, notice number 364863, but there was a clerical error resulting in the start and finish date being recorded as the same day in the material published to AusTender. When the error was discovered the end date was changed to 30 June 2011 to enable work to continue. The request for access was taken to be withdrawn on 2 May 2011 due to a lack of response to the charges notice and the matter was closed with the total amount spent on legal services of \$4,818.55, including GST (or \$4,380.50 excluding GST).

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Question No: 225

Program No. Legal Services Group

Hansard ref: In Writing

Topic: Legal Costs

Senator Fisher asked:

- a. What sum did each portfolio department within the portfolio spend on legal services FYTD within the department and agency? Please provide a list of each service and costs.
- b. What sum did each portfolio department within the portfolio on legal services FYTD from the Australian Government Solicitor? Please provide a list of each service and costs.
- c. What sum did each portfolio department within the portfolio spend on legal services FYTD from private firms? Please provide a list of each service and costs.
- d. What sum did each portfolio within the portfolio spend on legal services FYTD from other sources? Please provide a list of each service and costs.

Answer:

The following information is provided in relation to the four different parts of the question:

- a. The Department of Broadband, Communications and the Digital Economy expended a total of \$6,227,812 (GST exclusive) on legal services from 1 July 2011 to 31 May 2011. \$3,027,686 (GST exclusive) was expended on legal services provided by external providers. Expenses relating to the cost of in-house provision of legal services was \$3,200,126 (GST exclusive).
- b. The Department of Broadband, Communications and the Digital Economy expended \$343,689 (GST exclusive) on legal services provided by the Australian Government Solicitor.
- c. The Department of Broadband, Communications and the Digital Economy expended \$2,675,960 (GST exclusive) on legal services provided by private law firms from 1 July to 31 May 2011.
- d. The Department of Broadband, Communication and the Digital Economy expended \$8,037 (GST exclusive) on legal services provided by the Attorney General's Department from 1 July to 31 May 2011.

Answering the parts of the question requesting lists of each service would contravene Government policy not to generally disclose the content or nature of legal advice. This policy was confirmed in a letter from the Secretary of the Department of the Prime Minister and Cabinet, Mr Terry Moran, to all Department Secretaries on 23 May 2008 in response to a question on access to legal advice at Senate Additional Budget Estimates in February 2008.