



**Australian Government**  
**Department of Defence**  
Defence Support and Reform Group

Freedom of Information and  
Information Management Branch  
Department of Defence

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Our reference: FOI 034/13/14

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your correspondence dated 29 July 2013 in which you sought access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"...specific information related to the above listed project LAND 58 AN TPQ36 LOTE.*

*The project is now completed and I understand that the project File(s) have been recently archived. The information being sought under FOI is*

- *The Price and delivery Schedule [ITEM 1]*
- *Schedule of Payments [ITEM 2]*
- *Summary of the division of payments between Raytheon Australia (Prime Contractor) and BES Systems Israel (Sub Contractor to Raytheon) [ITEM 3]."*

2. Please note that we have added the above item numbers to the scope of your request.

3. On 20 August 2013, we informed you that the decision maker had decided to consult, under section 27 of the FOI Act, a third party over the release of certain business information. Accordingly, the due date for providing you with a decision was extended to **27 September 2013**.

4. The purpose of this letter is to provide you with the decision relating to the documents that are the subject of your request.

**FOI decision maker**

5. Mr Marcus Smith, Director Engineer Systems Program Office, Land Systems Division, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

### Documents identified

6. Mr Smith identified five documents as matching the description of your request. A schedule of documents is at Enclosure 1.
7. Documents in the form approved for release are at Enclosure 2. For ease of reference and for the purpose of processing this request, an FOI Item number has been added to each of the documents, which corresponds with the schedule.

### Decision

8. Mr Smith has decided to:
- a. release serials 1 and 4 in full; and,
  - b. release serials 2, 3 and 5 with deletions in accordance with sub-section 22(1) [Access to edited copies with exempt or irrelevant material deleted] of the FOI Act, on the grounds that the deleted material is exempt under Section 47G (Public Interest Conditional Exemptions – Business Documents) of the FOI Act.
9. Mr Smith's reasons for this decision are set out below.

### Reasons for decision

10. In making his decision, Mr Smith had regard to:
- a. the content of the documents in issue;
  - b. the comments of the consulted third party;
  - c. the relevant provisions of the FOI Act;
  - d. the Guidelines issued by the *Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (the Guidelines)*; and
  - e. the *Principles on Open Public Section Information* issued by the Information Commissioner.
11. In examining the content of the documents identified as matching the request, Mr Smith considered the application of the provisions of the FOI Act with particular regard to the following section.

#### ***Section 47G – Business***

*A document is conditionally exempt if its disclosure under the 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.*

12. Mr Smith reviewed Serials 2, 3 and 5 in their entirety, taking into account the information contained therein as well as the comments from the consulted third party. Mr Smith is of the view that disclosure of this information would have an unreasonable and significantly adverse effect on the owner of the information, as it would provide visibility of commercially sensitive pricing information to potential competitors in the market. Accordingly, Mr Smith decided to redact the commercially sensitive information in these documents before release.

#### **Public interest test – Section 47G**

13. As section 47G is a conditional exemption, Mr Smith applied the public interest test in order to determine whether disclosure of the documents would be contrary to the public interest. Mr Smith took into account the following public interest factors in favour of and against disclosure:

##### **Factors in favour of disclosure**

- a) promoting the objects of the Act (refer sections 3 and 3A);
- b) informing debate on a matter of public importance; and
- c) promoting effective oversight of public expenditure.

##### **Factors against disclosure**

- a) interest in preserving the efficient and proper functioning of government; and
- b) interest in protecting the integrity of the decision making process by separating the final decision making policy from the opinions and advice of the officials who contributed to the consideration.

14. In Mr Smith's view, in relation to these sections of the documents, the factors against disclosure outweigh the factors in favour of disclosure as this information will make only a minimal contribution to governmental accountability.

15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Mr Smith considered the range of relevant factors that favour access to a document set out in section 11B(3) [public interest exemptions - factors favouring access] of the FOI Act. Mr Smith noted that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in Government processes, nor would it increase scrutiny or discussion of Government activities.

16. While Mr Smith noted that the release of this information may be of some interest to your client, it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure, nor would it allow your client to have further access to their own personal information.

17. In coming to the above decision, Mr Smith considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act. Accordingly, Mr Smith considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, Mr Smith decided on balance that it would be contrary to the public interest to release the information considered exempt under subsection 47G [business] of the FOI Act.

### Documents not located

18. Mr Smith has decided to refuse access to Item 3 under section 24A(1)(b)(ii) [documents do not exist] of the FOI Act.
19. Section 24A(1) of the FOI Act states:  
*24A Requests may be refused if documents cannot be found, do not exist or have not been received*  
*Document lost or non-existent*  
 (1) An agency or Minister may refuse a request for access to a document if:  
 (a) all reasonable steps have been taken to find the document; and  
 (b) the agency or Minister is satisfied that the document:  
     (i) is in the agency's or Minister's possession but cannot be found; or  
     (ii) does not exist.
20. Paragraph 8.41 of the Guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1);  
*8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known that it no longer exists. The statement should describe the steps the agency took to search for it.*
21. The area responsible for the management of this contract advised Mr Smith that there are no documents in existence that meet this criteria, as all payments made under the contract by Defence were made directly to Raytheon Australia.

### Rights of review

22. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 3.

### FOI Disclosure Log

23. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

**Further information**

24. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

25. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Mr Phillip Connelly  
Case Officer  
Freedom of Information

5 September 2013

**Enclosures:**

1. Schedule of documents
2. Documents in the form for release
3. Fact Sheet: Freedom of Information – Your Review Rights