




Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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Our reference: FOI 056/13/14



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your letter dated 9 August 2013, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents relating to a number of Contracts, Requests for Tender and similar documents issued by the Department of Defence.
2. By email, dated 15 August 2013, Mr Rod Dudfield, Director Freedom of Information, informed you that your request was at risk of being refused under section 24AA [practical refusal reason] of the FOI Act, as it was too broad.
3. By email, dated 26 August 2013, you agreed to refine the scope of your request to the following:

“ITEM 1 - Serial 1.1C (ITR DRH 01/2008 (Relocation Services)) - Removal Services and Relocation Administration Services Conditions of Contract - Toll Transitions Pty Ltd - 15 December 2009 to 30 June 2015;

ITEM 2 - Serial 1.2D (RFT AZ5482) - Awarded contract (we note that the document will be partially redacted to protect commercially sensitive information); and

ITEM 3 - Serial 1.5A (SON1380121) - ASDEFCON (Standing Offer for Services) - Contract No. DMO/GMCOM/00171/2013.”

4. By email on 11 October 2013, I informed you that this Department was prevented by paragraph 27A(6) [Access not to be given until review or appeal opportunities have run out] of the FOI Act, from providing the documents to you until it becomes apparent that the third parties do not propose to exercise their right to seek review of the decision. The third parties had until 11 November 2013 to appeal the decision. As such, the due date for third parties to exercise their right to seek review has expired.

5. 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

6. In relation to Item 1 and 2 of your request, Mr Laurie Curry, Estate Support Manager, Defence Support Victoria and Tasmania was the accredited decision maker, under the FOI Act.

7. In relation to Item 3 of your request, Mr Mark Worrall, Director Defence Materiel Organisation Ministerial and FOI, was the accredited decision maker, under the FOI Act.

Documents identified

8. Mr Curry identified thirteen documents as matching the description of Items 1 and 2 of your request.

9. Mr Worrall identified one document as matching the description of Item 3 of your request.

10. The documents in the form for release are at Enclosure 2.

Decision

11. Mr Curry decided to:

- a. Release five documents in full; and
- b. Partially release eight documents with deletions made in accordance with section 22 [access to edited copies with exempt or irrelevant material deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under sections 47F [Public interest conditional exemptions – personal privacy] and 47G [Public interest conditional exemptions – business] of the FOI Act.

12. Mr Worrall decided to release the document with deletions made in accordance with section 22 of the FOI Act on the grounds that the deleted material is considered exempt under sections 47F and 47G of the FOI Act.

13. A schedule of documents that details the decision in relation to each document is at Enclosure 1.

Material taken into account

14. In making their decision Mr Curry and Mr Worrall had regard to:

- a. The terms of the request;
- b. The content of the identified documents;

- c. Third party responses in accordance with section 27 of the FOI Act;
- d. Advice from Defence officers with responsibility for matters relating to the documents;
- e. Relevant provisions in the FOI Act;
- f. *The Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and*
- g. *Principles on open public sector information* issued by the Information Commissioner.

Reasons for decision

Section 47F – Personal privacy

15. Upon examination of the documents, Mr Curry and Mr Worrall found that the documents contained signatures, contact information and Defence employee signatures, which they consider constitutes personal information under section 4 of the FOI Act. In accordance with section 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Mr Curry and Mr Worrall had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known (or to have been) associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

16. Against those criteria, they found that:

- a. the specific personal information is not well known to the general community;
- b. the persons to whom the information relates is not known by the general community to have been associated with the matters dealt with in the documents; and
- c. the personal information is not readily available from publicly accessible sources.

17. Noting the findings against the above criteria, Mr Curry and Mr Worrall decided that the disclosure of this information would be an unreasonable disclosure of personal information belonging to persons other than you. Accordingly, Mr Curry and Mr Worrall considered this material to be conditionally exempt under section 47F of the FOI Act.

Section 47G –Business

18. Section 47G(1)(a) states the following:

“A document is conditionally exempt if it would disclose information concerning the business; commercial or financial affairs of an organisation or undertaking, and that disclosure would, or could reasonably be expected to, unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affairs”.

19. Subsection 47G(1)(b) allows for conditional exemption if disclosure of the identified material could reasonably be expected to prejudice the future supply of information to the Commonwealth.

20. Against this criteria, Mr Curry and Mr Worrall found that the disclosure of business information including pricing breakdowns for contracted services that is not otherwise publicly available, which if disclosed could allow competitors to achieve an unfair advantage over the third parties, would be unreasonable and contrary to the public interest. Furthermore, Mr Curry and Mr Worrall found that if this information was disclosed, it could lead to the Government not being able to provide best value for future services as businesses may not compete for contracts if there is a risk of disclosure of confidential and sensitive business information.

21. Accordingly, they considered this material to be exempt under sections 47G of the FOI Act.

Section 11B - Public Interest Considerations

22. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

23. Subsection 11B(3) states 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
- b) inform the debate on a matter of public importance
- c) promote the effective oversight of public expenditure; and
- d) allow a person to access his or her own personal information.

24. In considering subsection 11B(3) of the FOI Act, Mr Curry and Mr Worrall noted that disclosure of the identified documents may promote the objects of the FOI Act, by granting access to government held information. Mr Curry and Mr Worrall considered that disclosure of the specific conditionally exempt material would not inform debate on a matter of public importance. Mr Curry and Mr Worrall did not consider that disclosure of the information would promote oversight of public expenditure but may adversely affect the commercial activities of third parties. Mr Curry and Mr Worrall did not consider that the final consideration was relevant in this instance as the information does not relate to your own personal information.

Public Interest Considerations – section 47F

25. As noted in paragraphs 22-24, Mr Curry and Mr Worrall considered that the public interest in promoting the objects of the Act have been satisfied as, in their opinion, merely removing third party employee names, signatures and contact information and Defence employee signatures does not detract from the public disclosure of government-held information.

Public Interest Considerations – section 47G

26. As noted in paragraphs 22-24, Mr Curry and Mr Worrall considered the same factors in relation to section 47G. Mr Curry and Mr Worrall considered that the public interest in promoting the objects of the Act have been satisfied, as removing information concerning pricing breakdowns for contracted services does not detract from the public disclosure of government-held information. Mr Curry and Mr Worrall considered that disclosure of the specific conditionally exempt material would not inform debate on a matter of public importance, nor promote effective oversight of public expenditure, other than that already published in the public domain.

27. Mr Curry and Mr Worrall considered the responses of the third parties with regard to business information and formed the view that disclosure of their business information would expose confidential and sensitive business information and adversely impact business opportunities in what is a competitive global relocation market.

28. In coming to the above decision, Mr Curry and Mr Worrall considered subsection 11B(4) of the FOI Act, which lists factors that must not be taken into account in deciding whether access would, on balance, be contrary to the public interest to release the information considered exempt under sections 47F and 47G.

29. Accordingly, Mr Curry and Mr Worrall consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, Mr Curry and Mr Worrall decided on balance that it would be contrary to the public interest to release the information considered exempt under sections 47F and 47G.

Rights of review

30. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights" is at Enclosure 1.

FOI Disclosure Log

31. 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. I will advise you of the publication date when the documents are dispatched to you.

Further advice

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

33. Should you have any questions, please contact this office.

Yours sincerely



Sally Philp
Assistant Director
Freedom of Information

13 November 2013

Enclosures:

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