



Our reference: [REDACTED]

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 8 September 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...documents related to the approval by the Australian government of defence export permits for small and light weapons to Sri Lanka, Papua New Guinea, and New Caledonia for the year 2012.

In 2012, the Australian government, through the Defence Export Control Office, issued permits for the export of defence and strategic goods, under the small arms and light weapons category, to those three jurisdictions.

It is issued the following number of permits for Calendar Year 2012:

Sri Lanka 1

New Caledonia 5

Papua New Guinea 4

I seek documents containing information regarding the details of these export approvals. Those details include: the specifications of the materiel approved for export; the manufacturers' names; the date approved; the number, size or amount approved for export; and the details of any export that took place.

In the case of this request, 'documents' refers to all approval documents, registers, reports, papers, working papers, tables, graphs, powerpoint presentations, spreadsheets, emails, letters, or other documents that detail the scope and nature of these exports.

Background

2. On 22 October 2014, I informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27A [Consultation – documents affecting personal privacy] of the FOI Act, before finalising the decision. As such, in accordance with section 15(6) [extension of processing period to comply with requirement of section 26A, 27 or 27A] of the FOI Act, the statutory timeframe was amended to 26 November 2014.

3. 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

4. Mr John Toohey, Director, Defence Export Control Office is the accredited decision maker, under the FOI Act, in relation to your request.

Identified documents

5. Mr Toohey have identified ten documents in the form of Military Export Approvals, and supporting documents, that fell within the scope of your request. A Schedule of Documents is at Enclosure 1.

Decision

6. Mr Toohey decided to release the identified documents with deletions, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, as he considered the deleted material to be exempt under sections 33 [national security, defence or international relations], 47F [public interest conditional exemptions -personal privacy] and 47G [public interest conditional exemptions –business] of the FOI Act.

Material taken into account

7. In making his decision Mr Toohey had regard to:

- the content of the documents in issue;
- relevant provisions in the FOI Act;
- comment received from parties formally consulted under the FOI Act; and
- the *guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act.*

Section 47F – personal privacy

8. Section 47F protects personal privacy by providing that a document is conditionally exempt if its release would involve the unreasonable disclosure of personal information of any person (including a deceased person).

9. The documents identified for release contained the names, direct contact details and personal signatures of personnel employed by a number of Australian companies and their international business partners, as well as some identifying details of Defence personnel.

10. In accordance with subsection 47F (2) of the FOI Act, in determining whether disclosure of this information would involve the unreasonable disclosure of personal information, Mr Toohey took into account:

- a. the extent to which the information is well known;
- b. whether the people to whom the information relates are known to be (or to have been) associated with the matters dealt with in the documents;
- c. the availability of the information from publicly accessible sources; and
- d. that these are the same matters that must be taken into account for the purpose of consulting an affected third party under section 27A(2) of the Act.

11. Against these criteria, Mr Toohey found that:

- a. the name, direct contact details and personal signatures contained in the documents are not well known;
- b. he was not aware of any information which confirms that the people concerned are involved in the matter dealt with in the documents;
- c. the specific information is not readily available from publicly accessible sources, including the websites of the organisations; and
- d. further, some third party details contained in these documents could not be verified.

12. Mr Toohey therefore decided that the information satisfied the criteria for conditional exemption under section 47F of the FOI Act as the disclosure of such information would be considered unreasonable.

13. In making his decision, Mr Toohey also noted that the personal information included in the documents captured by the scope of this request were made in confidence at the time of their lodgement, and were given under the understanding that these details would not be disclosed.

Section 47F – Public Interest Considerations

14. Section 47F of the FOI Act states that access to a conditionally exempt document must generally be given unless its disclosure would be contrary to the public interest as set out in section 11B of the FOI Act.

15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I had regard to the range of factors that favour access to a document as set out in subsection 11 B(3) of the FOI Act. I note that disclosure of the documents may promote the objects of the FOI Act, as information held by the Government is a national resource. However, I do not consider that disclosure of this specific information would increase public participation in Government processes.

16. Though the release of this material is of interest to you, its disclosure would not inform public debate on any matter of public importance in any meaningful way. Furthermore, disclosure of personal information could be considered a safety/security risk for the businesses and foreign entities captured by the scope of this request.

17. I considered, on balance, that the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents.

Section 47G – Business Information

18. Section 47G states that a document is conditionally exempt if it discloses business 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 where its disclosure:

- a. would, or could reasonably be expected to, unreasonably affect the 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 (s47G(1)(a)); or
- b. could be reasonably expected to prejudice the future supply of information to the Commonwealth...for the purpose of the administration of a law of the Commonwealth or the administration of matters...by and agency (s47G(1)(b)).

19. Mr Toohey found that the documents captured by the scope of this request contained business information regarding a number of Australian companies and foreign entities that these Australian companies were lawfully trading with at the time of the export.

20. This information includes identifying business information such as name, contact details and ABN, estimated values assigned to weapons, proprietary information that would identify third parties, expected dates of export, company seals, and permit holder's licence details and the serial numbers of weapons. The information, if released, would adversely affect these Australian companies in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

Section 47G -public interest considerations

21. Subsection 11A (5) of the FOI Act provides that conditionally exempt matter must be released, unless, in the circumstances, access to that document would, on balance, be contrary to the public interest.

22. In considering subsection 11B(3) of the FOI Act, Mr Toohey noted that disclosure of the documents may promote the objects of the FOI Act, through access to government held information. He also noted that the documents, in general, may inform debate on a matter of public importance and promote effective oversight of public expenditure. However, Mr Toohey did not consider that release of the specific conditionally exempt material would inform debate on a matter of public importance, nor promote effective oversight of public expenditure.

23. In coming to his decision Mr Toohey took into account the responses received to formal consultation undertaken with a number of businesses. All of the third parties consulted advised that they objected to the disclosure of their business information due to it being a security sensitive industry. Mr Toohey considered, on balance, that the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents

Section 33 - National security, defence or international relations

24. The FOI Act includes provisions under Section 33 that applies to documents where release would or could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth. The section also refers to information or matter communicated in confidence by or on behalf of a foreign government or organisation to the Commonwealth.

25. Relevantly, section 4(5) of the FOI Act provides that:

‘Without limiting the generality of the expression security of the Commonwealth, that expression shall be taken to extend to:

- a. matters relating to the detection, prevention or suppression of activities, whether within Australia or outside Australia, subversive of, or hostile to, the interests of the Commonwealth or of any country allied or associated with the Commonwealth; and*
- b. the security of any communications system or cryptographic system of the Commonwealth or of another country used for:*
 - 1. the defence of the Commonwealth or of any country allied or associated with the Commonwealth; or*
 - 2. the conduct of international relations of the Commonwealth.*

Furthermore, section 4(10) of the Act states:

‘To avoid doubt, information or matter communicated in the way mentioned in paragraph 33(b) includes information or matter so communicated pursuant to any treaty or formal instrument on the reciprocal protection of classified information between the Government of the Commonwealth, or an authority of the Commonwealth, and:

- 1. a foreign government or an authority of a foreign government; or*
- 2. an international organisation.’*

26. The disclosure of information contained in one of the documents captured by the scope of the request would jeopardise the good working relations between the Department of Defence and a number of its agencies overseas. It is determined that the release of specific personal and business information relating to this entity, provided to the Defence Export Control Office (DECO) in confidence in the form of an export application, would make that agency less willing to cooperate with DECO in the future.

27. The concept 'Information communicated in confidence' is an important consideration that underpins all ten documents identified for release. Section 33(b) exempts information communicated in confidence to an Australian Government agency by another government or one of its authorities. Information exchanged in confidence between DECO and foreign agencies and entities is communicated and received under the implied understanding that the communication is confidential.

28. Mr Toohey therefore made a number of exemptions that, if released, would be reasonably expected to breach the confidence of the foreign entities/ agencies that were dealt with at the time of the export permit. The disclosure of which would damage the integrity of the working relationship DECO has with these international partners.

Clarifying note

29. Please be advised that Document 6 contains reference to Tonga, this was an administrative error during processing and was later corrected.

Payment of Charges

30. In our letter, dated 10 September 2014, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request, and notified our office on 29 September 2014 that the required deposit had been paid.

31. Upon completion of your request, after deducting the free decision making time, the actual amount for processing exceeded the original estimate provided to you. However, as explained in the above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full. The remaining balance is the difference between actual charges and the deposit you have already paid.

32. Accordingly you are required to pay the remaining [REDACTED] in order to finalise your request. Please find attached at Enclosure 2 a Payment Authorisation Form for the balance. Once you have completed the form please return to foi@defence.gov.au.

Rights of review

33. 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 3.

FOI Disclosure Log

34. 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 will publish the identified documents relating to this request within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further advice

35. The FOI Act may be accessed online at: <http://www.comlaw.gov.au/Details/C2014C00122> .

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

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

26 November 2014

Enclosures:

1. Schedule of documents
2. Freedom of Information Payment Authorisation Form
3. Fact Sheet: Freedom of Information – Your Review Rights