



Reference: R28341743

FOI 111/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by [REDACTED] (Request Number 4) under the *Freedom of Information Act 1982* (FOI Act), for access to:

“We refer to the Department of Defence contracts listing for 1/7/2009 to 30/6/2010 and the Entity Reports for complying with the Senate Order on Procurement Contracts and use of Confidentiality Provisions 2014/2015 Financial Year, and seek access to the following documents:

- 1. a copy of any report(s) and/or correspondence prepared by SSL Asset Services Pty Ltd or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 23 July 2009, to ‘convert fire foam systems from 3M AFFF to Ansulite at RAAF Base Williamtown’;*
- 2. a copy of any report(s) and/or correspondence prepared by SSL Asset Services Pty Ltd or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 23 July 2009, to ‘undertake repair/replacement of fire systems at various facilities within RAAF Base Williamtown’;*
- 3. a copy of any report(s) and/or correspondence prepared by Spotless Services Australia Ltd or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 28 October 2009, regarding ‘AFFF Contamination’;*
- 4. a copy of any report(s) and/or correspondence prepared by CRC Care Pty Ltd or any person or entity on its behalf provided or sent to Defence detailing the steps taken in fulfilment of its contract with Defence commencing 25 September 2013 in relation to ‘bush fire fighting foam research’;*
- 5. a copy of any report(s) and/or correspondence prepared by CRC Care Pty Ltd or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 11 February 2014 in relation to ‘fire foam Tridol research’;*
- 6. a copy of any report(s) and/or correspondence prepared by CRC Care Pty Ltd or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 1 September 2014 in relation to ‘Research development contamination remediation’;*
- 7. a copy of any report(s) and/or correspondence prepared by Tox Free Solutions Limited or any person or entity on its behalf provided or sent to Defence, detailing the steps taken in fulfilment of its contract with Defence commencing 12 March 2014 in relation to ‘Disposal of 3M Water Aqueous Film Forming Foam RAAF Base Williamtown’;*
- 8. a copy of any report(s) and/or correspondence prepared by Tox Free Solutions Limited or any person or entity on its behalf provided or sent to Defence, detailing the*

steps taken in fulfilment of its contract with Defence commencing 21 January 2015 in relation to 'Disposal of 3M AFFF Water Film Forming Foam Drums.

Excluding personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents."

FOI decision maker

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified 23 documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and item number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
 - a. release 16 documents in full;
 - b. partially release 7 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under section 47E [public interest conditional exemptions – certain operations of an agency] and 47G [public interest conditional exemptions - business] of the FOI Act; and
 - c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

7. In making my decision, I had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions in the FOI Act; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

Section 47E – certain operations of agencies

8. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency...

9. Where access has been denied to information under section 47E(d) of the FOI Act, I considered that the material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of Defence.

10. I note that use of the word ‘could’ in this provision also requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

11. This information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding contracts and contracted pricing for goods and services. The methods of managing such processes are not common knowledge and reliance on them is critical to ensure that Defence is receiving the highest level of service and value for money from external providers. If the information was made publicly available it could reasonably cause an adverse effect on Defence’s ability to conduct and manage working relationships with contractors in the future.

12. I am satisfied that the expected effect of disclosing to the applicant material identified exempt under section 47E(d) could adversely effect the proper and efficient conduct of the operations of Defence. I have decided that the specified material identified in the documents is conditionally exempt pursuant to subsection 47E(d) of the FOI Act.

Section 47G – business

13. Upon examination of the documents, I identified business information of a third party.

14. Under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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.

15. I am satisfied that the effect of disclosing the identified material could have an adverse effect on a company as unauthorised disclosure of banking details could affect the profitability of their business operations.

16. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G of the FOI Act.

Public interest considerations – sections 47E and 47G

17. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed “*unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest*”.

18. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the Guidelines together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

19. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, disclosure of specific contractual information, including pricing, could cause an adverse effect on the operations of Defence.

20. There is a strong public interest in not releasing information that would unreasonably affect a business. I took into account the nature of the material and found that its disclosure in this instance would not significantly promote the objects of the Act, or inform debate on a matter of public importance. However, disclosure has the potential to cause harm to the business and risk Defence's commercial relationship with service providers.

21. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, I have decided that it would be contrary to the public interest to release the information considered exempt under sections 47E and 47G of the FOI Act.

22. None of the factors listed in section 11B(4) [irrelevant factors] were taken into account when making my decision.

Clarification

23. With regards to Item 6 there is no specific report titled "Research Development Contamination Remediation". Instead, this title refers to an entire project which incorporated three separate reports. Only one report falls within the scope of this request and has been provided accordingly.

Further Information

24. Some of the documents matching the scope of this request contained a dissemination limiting marker. As the documents are approved for public release the marker has been struck through.

jan.andrews

Digitally signed by jan.andrews
DN: c=AU, o=GOV, ou=DoD, ou=PKI,
ou=Personnel, cn=jan.andrews
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Jan Andrews
Accredited Decision Maker
Associate Secretary Group