



Australian Government
Department of Defence

BK2233287

FOI 150/18/19 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“...a full copy of contract CN3522125 between Department of Defence and Noakes Group Pty Limited published on the AusTender site on 11 July 2018. The category was described as "Lease and rental of property or building with a contract period of 2 June 2017 to 1 June 2022 with a contract value of \$5,480,970. The Agency Reference ID was 000100219. The contract description was Domestic Leasing...”

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, and documents sent to and from you. Furthermore, Defence only considers final versions of documents.

FOI Decision Maker

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

Documents identified

3. I have identified 1 document as matching the description of the request.

Decision

4. I have decided to partially release 1 document 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 47G.

5. It should be noted that as there was no ‘contract’ per se for CN3522125, the provisions of subparagraph 24A(1)(b)(ii) apply (that is, documents do not exist). A copy of the Licence Agreement has therefore been included in lieu of a contract.

Material taken into account

6. 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 47G – Business

7. A document is conditionally exempt under section 47G if “...disclosure would, or could reasonably be expected to, unreasonably affect that ... organisation or undertaking in respect of its lawful business, commercial or financial affairs.”

8. Upon examination of the documents, I identified information that has a commercial value that would reasonably be expected to be diminished if disclosed, namely the costing information provided in the lease. This information covers more than the information that has been made public via the normal tendering processes and would disclose material deemed commercially sensitive by its owners.

9. Accordingly, I have decided the information is conditionally exempt under section 47G of the FOI Act.

Public Interest Considerations

10. 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 the material, as set out in section 11B(3) of the FOI Act.

11. There are a number of factors that favour disclosure, including greater transparency for the expenditure of Commonwealth funds. In support of that, I note that the contract value has been made public through publication on the Australian Government’s web-site, AusTender.

12. While I considered disclosing the information, I was mindful that the final documents would be made public via the departmental website, which would also expose commercial business information to others beyond the applicant. The pricing breakdown included in the contract is negotiated with Defence under the assumption that it would be kept as Commercial-in-Confidence. A factor against disclosure is the impact to Defence’s relationships with business and future commercial dealings if they thought their final pricing values could be disclosed.

13. Upon balancing all of these factors, I have decided not to disclose the information in order to protect the commercial data of the contractor, and limit the likelihood of the withholding of information by future tenderers on the grounds that it may be subsequently made public. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

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by Marcus.Smith
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17:07:46 +11'00'

Marcus Smith
Accredited Decision Maker
Estate and Infrastructure Group