



**Australian Government**  
**Department of Defence**

Freedom of Information  
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CANBERRA BC ACT 2610  
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FOI@defence.gov.au

Our reference: FOI 157/15/16



By email:

Dear

**NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST**

1. I refer to your correspondence, dated 22 January 2016, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*“a copy of the dated 22 December 2015 from Mr Jurgen Fritz, Director Property Disposals, Department of Defence to regarding the Maryborough Rifle.”*

**Background**

2. On 25 January 2016, our office informed you that the statutory deadline for you to receive the decision on this request was 16 February 2016.
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. Ms Belinda Ridley, Director, Defence Procurement and Contracting Branch is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Documents identified**

5. Ms Ridley identified one document as matching the description of your request. The document in the form approved for release is at Enclosure 1.

**Decision**

6. Following examination of the document, Ms Ridley has decided to partially release the document with deletions on the grounds that the deleted material is conditionally exempt under section 47D [public interest conditional exemptions – financial or property interests of the Commonwealth] and/or section 47F [public interest conditional exemption – personal privacy] of the FOI Act.

### **Material taken into account**

7. In making her decision, she had regard to:
- a. the terms of the request;
  - b. the content of the identified document 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); and
  - e. advice provided by the area whose duties relate to the requested document.

### **Reasons for decision**

#### **Section 47D – Public interest conditional exemption – financial or property interests of the Commonwealth or Norfolk Island**

8. Section 47D provides that a document is conditionally exempt if its disclosure under the FOI Act would have a substantial adverse effect on the financial interests of the Commonwealth. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

9. On examining the document, Ms Ridley noted that it contained information which may impact upon the future financial property prices of Commonwealth property and long term Defence relationships with associated communities both in a social and commercial sense. The information contained within the document divulges the methodology and considerations that the Commonwealth uses in terms of conducting property negotiations and transfers. Should this information become widely available, the Commonwealth may be placed at a significant disadvantage in any future transactions, adversely impacting upon its financial position.

10. The information may also impact upon the community in terms of disclosing the financial considerations made by the Commonwealth in land transactions, leading area owners to, rightly or wrongly, speculate on prices for Commonwealth properties. This could have a significant deleterious affect on the properties, resulting in restrictions in the future on the Commonwealth being able to achieve the best value for money for land holdings.

11. Ms Ridley found that the release of the information would have an adverse effect on the financial interests of the Commonwealth in that it may prejudice the ability of the Commonwealth to pursue its commercial objectives. Accordingly, she was satisfied that the information was exempt under section 47D.

12. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless access to the document would be contrary to the public interest.

#### **Public interest considerations – Section 47D**

13. When assessing whether the disclosure of the information is contrary to the public interest, Ms Ridley considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

14. In relation to section 11B(3)(a) of the FOI Act [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)], information held by the Government is a national resource and release of the information could promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act in so far as it may increase scrutiny or discussion of

Defence activities and promote effective oversight of public expenditure (section 3(2)(b) of the FOI Act).

15. However, as noted above release of this information could also reasonably be expected to prejudice the competitive commercial activities of the Department of Defence by giving away key aspects of Defence's initial bargaining position and thereby allowing interested parties to tailor their offers to take into account Defence's terms and conditions and possible sale price. While providing details of Defence's proposed terms and conditions and possible sale price does aid in the promotion of effective oversight of public expenditure, Defence is also an obligation to obtain the highest value for money from the sale of Commonwealth property.

16. Given the above, Ms Ridley found that the public interest factors against disclosure outweigh the factors for disclosure of the identified information and she deemed the information exempt under section 47D of the FOI Act.

#### **Section 47F - Public interest conditional exemption – personal privacy**

17. Ms Ridley found that the document identified as being within the scope of this request contains personal information of individuals other than the applicant, namely a person's signature. It is therefore appropriate to consider whether this information is exempt from release under the FOI Act. Exemption claim - Section 47F(1) of the FOI Act

18. The signature could be used to reasonably ascertain the identity of an individual and therefore satisfies the definition of personal information in section 4 of the FOI Act. To determine whether the disclosure of the identified personal information was unreasonable, she had regard to the criteria specified in section 47F(2) of the FOI Act.

19. Section 47F(2) states:

#### *General Rule*

- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
- (a) *the extent to which the information is well known;*
  - (b) *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
  - (c) *the availability of the information from publicity accessible sources;*
  - (d) *any other matters that the agency or Minister considers relevant.*

20. Against these criteria, Ms Ridley found:

- a. the specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the documents; and

- c. the information is not readily available from publicly accessible sources.

21. With reference to the assessment above, she considered that the release of the person's signature would identify individuals other than the applicant and would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

22. Section 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless access to the document would be contrary to the public interest.

#### **Public interest considerations – Section 47F**

23. When assessing whether the disclosure of the personal information is contrary to the public interest, Ms Ridley considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

24. In relation to section 11B(3)(a) of the FOI Act [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)], information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act.

25. However disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

26. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors she found particularly relevant to this request are that disclosure of the documents:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy (Paragraph 6.29(a))

27. Ms Ridley found that the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information and she deemed the information exempt under section 47F(1) of the FOI Act.

#### **FOI Disclosure Log**

28. 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.

## Your Review Rights

### *Internal Review*

29. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: [FOIReview@defence.gov.au](mailto:FOIReview@defence.gov.au)  
 Fax: 02 626 62112  
 Post: Freedom of Information Directorate - Reviews  
 Department of Defence  
 CP1-6-029  
 PO Box 7910  
 CANBERRA BC ACT 2610

### *Australian Information Commissioner*

30. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
 Phone: 1300 363 992  
 Fax: 02 9284 9666  
 Post: GPO Box 2999  
 Canberra ACT 2601

### *Complaints*

31. You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: [tony.corcoran@defence.gov.au](mailto:tony.corcoran@defence.gov.au)  
 Post: Tony Corcoran  
 Assistant Secretary Information Management and Access Branch  
 CP1-6-14  
 PO Box 7911  
 CANBERRA BC ACT 2610

32. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)  
 Fax: 02 6276 0123  
 Post: Commonwealth Ombudsman  
 GPO Box 442  
 CANBERRA ACT 2601

33. Contact details for the Information Commissioner are above.

34. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Michelle Rueckert  
Assistant Director, Freedom of Information

22 February 2016

Enclosure:

1. Document in the form for release