



Australian Government
Department of Defence

Reference: R28883706

FOI 208/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

“...PGPA S23 documents and vendor response to the originating CASSS Panel RFQTS under the Freedom of Information Act 1982 to establish the demand requirement for these services sourced from SYNERGY GROUP AUSTRALIA PTY LTD, Contract number ID CN3400965, value \$1,709,473.42.”

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 two documents as matching the description of the request. Specifically:
- Serial 1 - Department of Defence Webform - AB 714 Procurement Decision Record
 - Serial 2 - Quotation from Synergy Group Australia Pty Ltd
4. I have added an FOI reference number and Serial number to the document.

Decision

5. I have decided to:
- a. release one document in full (serial 1);
 - b. deny access to one document of the request under section 45 [documents containing material obtained in confidence], section 47G [Public interest conditional exemptions-business], and section 47F [Public interest conditional exemptions-personal privacy] of the FOI Act (serial 2); 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

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;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. consultation with a third party.

Reasons for decision

Section 45 Documents containing material obtained in confidence

7. Where access has been denied under section 45 of the FOI Act, I considered that the material would, or could reasonably be expected to cause damage to ongoing commercial relationships of the Commonwealth by divulging information communicated in confidence.

8. Section 45(1) of the FOI Act states “*A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*”

9. In relation to a breach of confidence, the Guidelines, paragraphs 5.142 & 5.143, provide that

5.142 A breach of confidence is the failure of a recipient to keep information, which has been communicated in circumstances giving rise to the obligation of confidence, confidential. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.

5.143 To found an action for breach of confidence (which means that s45 would apply), the following five criteria must be satisfied in relation to the information:

- *it must be specifically identified*
- *it must have the necessary quality of confidentiality*
- *it must have been communicated and received on the basis of a mutual understanding of confidence*
- *it must have been disclosed or threatened to be disclosed, without authority*
- *unauthorised disclosure of the information has or will cause detriment.*

10. Upon examination of the document matching the Item 2 of the request I formed the view that there exists an obligation between Synergy Group Australia Pty Ltd and the Department of Defence to maintain confidentiality of the quotation. The material being sought is of a confidential nature and was provided to the Commonwealth on the basis of a mutual understanding of confidence. Release of such information without the explicit agreement of Synergy Group Australia Pty Ltd could diminish the relationship with Defence and could lessen confidence in Defence’s ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence’s ability to conduct and manage working relationships with its contractors in the future.

11. In light of the above, I have decided that the specified material identified is exempt pursuant to section 45 of the FOI Act.

Section 47G - business

12. Where access has been denied under section 47G of the FOI Act, I considered that the material would, or could reasonably be expected to have an adverse effect on the business of Synergy Group Australia Pty Ltd.

13. Section 47G of the FOI Act states;

A document is conditionally exempt if its disclosure under this Act would disclose 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...*

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

15. Upon examination of the documents, I identified information relating to the business affairs, processes, methodologies, financial and intellectual property matters, all of a sensitive nature. Disclosure of the tender response could diminish the competitive nature and could affect the profitability of its business. In addition, it would show potential competitors how this particular business completes its tenders, allowing other businesses to potentially use this information in their own negotiations in the future.

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

Section 47F – Personal privacy

17. Where access has been denied under section 47F of the FOI Act, I considered that the material would constitute an unreasonable disclosure of personal information belonging to people other than the applicant.

18. Section 47F of the FOI Act states “(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”

19. In relation to unreasonable disclosure of personal information, the Guidelines, at paragraph 6.138, provide that “*The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.*”

20. In determining whether the disclosure of the document would involve an unreasonable disclosure of personal information, I had regard to:

- 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 documents; and
- c. the availability of the information from publicly accessible sources.

21. Upon examination of the document, I identified information, specifically information that would readily identify individuals, their employment history, specific technical abilities and experience, belonging to persons other than the applicant. In addition I have found that this specific information is not readily available from publicly available sources, nor is the information well known. This material satisfies the definition of personal information in section 47F of the FOI Act.

22. In light of the above, I have decided that the specified material identified is in fact conditionally exempt pursuant to section 47F of the FOI Act.

Public interest considerations - sections 47F and 47G

23. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

24. In determining whether to release the document, 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. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to the public interest. Specifically, I considered if disclosure of the document would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; or

- allow a person to access her or his personal information.

25. I found that 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 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request is that release of this information could reasonably be expected to prejudice:

- a. the protection of an individual's right to privacy;
- b. an agency's ability to obtain confidential information;
- c. prejudice an agency's ability to obtain similar information in the future;
- d. the competitive commercial activities of an agency; and
- e. harm the interests of an individual or group of individuals.

27. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47F and 47G of the FOI Act.

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

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Mr Owen Spoor
Accredited Decision Maker
Capability and Sustainment Group

February 2017