



Our reference: FOI 225/14/15

[REDACTED]

Dear [REDACTED]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email dated 14 November 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“A copy of the current Defence contract (and any amendment) in relation to Search and Rescue (SAR) helicopter support services for fighter and training aircraft.”

Background

[REDACTED]

3. In light of the above, your request was referred back to Air Force for a review of the original decision and a fresh decision on amendments 1 – 15. For ease of processing, your case was re-registered as FOI 225/14/15 with a statutory deadline of 15 February 2015.

4. On 6 February 2015, our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation – documents affecting business information] 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 17 March 2015.

5. The purpose of this letter is to provide you with a varied decision on FOI 153/14/15 and a fresh decision on the documents that were not previously considered as part of FOI 153/14/15.

FOI decision maker

6. As the original decision maker, Wing Commander Taylor, was unavailable, Group Captain K Robinson, Director of Personnel Air Force, was appointed as the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

7. Group Captain Robinson identified 17 documents as matching the description of your request. A schedule of documents is at Enclosure 1. Please note that the page numbering on some of the documents does not reflect the respective documents as a number of pages outside of the scope of the request were removed.

8. Documents in the form approved for release are at Enclosure 2. For ease of reference and for the purpose of processing this request, the decision maker has added an FOI number to each of the documents, which corresponds with the schedule.

Decision

9. Group Captain Robinson agreed with the original decision made by Wing Commander Taylor and the respective redactions to the documents, but decided to make further redactions to the originally considered documents.

10. Group Captain Robinson has decided to partially release 17 documents with deletions made in accordance with subsection 22(1) [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 47F [public interest conditional exemptions-personal privacy] and/or section 47G [public interest conditional exemptions - business] of the FOI Act.

Material taken into account

11. In making his decision, Group Captain Robinson had regard to:
- a. the content of the identified documents in issue;
 - b. relevant provisions in the FOI Act;
 - c. paragraph 6.29 of the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
 - d. the Principles on open public sector information issued by the Information Commissioner;
 - e. the response from third party consultations; and
 - f. the original decision made by Wing Commander Taylor for FOI 153/14/15.

Reasons for decision

Exemption claim – section 47F of the FOI Act

12. Upon examination of the documents, Group Captain Robinson identified signatures of persons other than you. He considered the disclosure of this material would constitute an unreasonable disclosure of personal information.

13. The Guidelines note that *'the personal privacy exemption is designed to prevent 'unreasonable' invasion of third parties privacy'*. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Group Captain Robinson 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 document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

14. Against those criteria, Group Captain Robinson found that:

- a. the specific personal information is not well known;
- b. the people to whom the information relates are known to have been associated with the matters dealt with in the documents;
- c. the personal information is not readily available from publicly available sources; and
- d. the material considered to be exempt is information that the individuals would reasonably be expected not to have disclosed to a third party without their consent.

15. In light of the above, Group Captain Robinson found the information to be conditionally exempt under section 47F of the FOI Act.

16. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest. Group Captain Robinson's public interest argument is detailed below with section 47G.

Exemption claim – section 47G of the FOI Act

17. 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...*

18. Where access has been denied to information under section 47G of the FOI Act, Group Captain Robinson considered that the material could reasonably be expected to have a substantial adverse effect on the business affairs of the companies providing information relevant to the SAR contract.

19. Group Captain Robinson noted 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. The reasonable expectation refers to material regarding details of present and future aircrafts processes and procedures.

20. Group Captain Robison was satisfied that the expected effect of disclosing to you material identified exempt under section 47G could have an adverse effect on the companies providing that information and potentially provide you with an unfair advantage if bidding for future contracts.

21. In light of the above, Group Captain Robinson decided that the specified material identified is in fact conditionally exempt pursuant to section 47G of the FOI Act.

Public interest – sections 47F and 47G

22. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest. The Guidelines state (at 6.8-6.9):

...The term 'public interest' is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered...

To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.

23. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Group Captain Robinson considered the range of factors that favour access to a document set out in section 11B(3) [public interest exemptions – factors favouring accessing] of the FOI Act. Group Captain Robinson noted that disclosure may promote some of the objectives of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

24. While he noted that the release of this material would be of some interest to you it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure.

25. Disclosure of the information would not allow you further access to your own personal information.

Irrelevant factors – section 11B (4)

26. In coming to the above decision, Group Captain Robinson had regard to subsection 11B(4) [irrelevant factors] of the FOI Act, which lists factors that must not be taken into account in deciding whether access would, on balance, be contrary to the public interest. None of the factors he took into account were listed under subsection 11B(4) of the FOI Act.

27. Accordingly, Group Captain Robinson considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, Group Captain Robinson decided that it would be contrary to the public interest to release the information considered under sections 47F and 47G of the FOI Act.

Rights of review

28. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 3.

FOI Disclosure Log

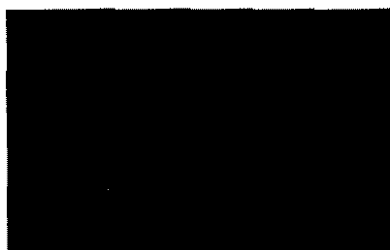
29. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further information

30. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2014C00673>

31. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Melissa Davidson
Assistant Director
Freedom of Information

16 March 2015

Enclosures:

1. Schedule of documents
2. Documents in the form for release
3. Fact Sheet: Freedom of Information – Your Review Rights