



Australian Government
Department of Defence

Reference: BJ3027026

FOI 228/18/19 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:

Item 1: Austender has published a contract between the Department of Defence and SME GATEWAY PTY LTD (CN3360238) for Specialist Safety Support Services. The contract value is \$320,000 under the category "corporate objectives or policy development".

In relation to CN3360238, please provide: "A full copy of the PGPA Section 23(3)" Approval to Commit Relevant Money, including Annex A and Annex B; and

Item 2: Austender has published a contract between the Department of Defence and SME GATEWAY PTY LTD (CN3372932) for Specialist Safety Support Services. The contract value is \$40,000 under the category "corporate objectives or policy development".

In relation to CN3372932, please provide: "A full copy of the PGPA Section 23(3)" Approval to Commit Relevant Money, including Annex A and Annex B; and

Item 3: Austender has published a contract between the Department of Defence and NOVA DEFENCE (CN3383676) for Specialised Safety Management System Support. The contract value is \$3,230,695.01 under the category "safety or risk analysis."

In relation to CN3383676, please provide: "A full copy of the PGPA Section 23(3)" Approval to Commit Relevant Money, including Annex A and Annex B.

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

Documents identified

3. I identified 3 documents as matching the description of the request.

Decision

4. I have decided to:

- a. refuse access to Item 2 of the request under section 24A [request may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act; and

- b. partially release 3 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 4E [public interest conditional exemptions-certain operations of agencies] and section 47F [public interest conditional exemptions-personal privacy]; and
- c. remove irrelevant material as referred to in the scope of the request in accordance with section 22 of the FOI Act.

Material taken into account

5. 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. advice received from Patrol Boat Group Headquarters (PBGH) and Maritime Safety Bureau in Navy Group.

Reasons for decision

Section 24A – Request may be refused if documents cannot be found, do not exist or have not been received

6. Section 24A(1) of the FOI Act States:

24A Request may be refused if documents cannot be found, do not exist or have not been received

Documents lost or non-existent

(1) An agency or minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document; and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

7. Advice received from PBGH was that no documents were generated for Annex A and Annex B of Item 2.

8. Based on the above, I am satisfied that no documents exist. Accordingly, I have decided to refuse access under section 24A of the FOI Act.

Section 47E – Certain operations of agencies

9. I found that parts of the identified documents contain material in respect of which a claim for exemption under section 47E(d) of the FOI Act may be warranted. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

10. 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.’

11. 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.

12. Upon examination of the documents, I identified information relating to businesses, the assessment of tenders against evaluation criteria and the comparative assessment of each tender. The information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding the assessment of contracts and contractors. If the information was made publically available it could reasonably cause an adverse effect on Defence’s ability to conduct, manage and perform its functions and working relationships with contractors in the future.

15. Taking the above into account, I consider that the identified documents contain information which is conditionally exempt under section 47E(d) of the FOI Act

16. 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’. My public interest considerations are detailed below.

47F - Personal privacy

17. Upon examination of the documents, I identified names and telephone numbers of third parties 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 disclosure of the documents 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 document; and
- c. the availability of the information from publically accessible sources.

21. Noting the above, I found that this specific information is not readily available from publicly available sources, nor is the information well known. I have decided that disclosure of the specified information would be an unreasonable disclosure of personal information belonging to individuals other than the applicant. Accordingly, I consider that the material is conditionally exempt under section 47F of the FOI Act.

22. 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'. My public interest considerations are detailed below.

Section 47E & 47F – Public interest considerations

23. In determining whether to release the documents, 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 public interest. Specifically I considered if disclosure of the documents would:

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

24. 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).

25. 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 are that the release of this information could reasonably be expected to prejudice:

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

26. Releasing details in relation to the tender assessment could have a substantial adverse effect on the proper and efficient conduct of the operations of Defence. If Defence was to release this type of information it would 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 have an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future.

27. I consider the release of names and telephone numbers in the documents could reasonably be expected to cause harm to the privacy of third parties.

28. 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 section 47E and 47F of the FOI Act..

Further Information

29. Advice received from Maritime Safety Bureau in relation to Item 3 of the request is that the purchase order was written back in the amount of \$17,115.00 in November 2017 due to an underspend in the 2016/2017 financial year.

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MJ McIntosh

Captain, Royal Australian Navy
Accredited Decision Maker
Navy Group