



Our reference: FOI 236/14/15

[Redacted]

By email: [Redacted]

Dear [Redacted]

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email, dated 5 February 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“The Wraith Review from December 2013.”

Background

2. On 9 February 2015, I wrote to you to advise of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date.

3. By email dated 10 February 2015, you advised that you wished to revise the scope of your request to *only the conclusion chapter or, if this does not exist within the document, only the recommendations.*

4. A revised preliminary assessment of FOI charges was sent to you on 13 February 2015. You agreed to proceed with your request, noting that a deposit was not required to be paid, on the same day. Accordingly, I immediately formally imposed the FOI charges associated with your request and advised you that the due date for your request was 11 March 2015.

5. On 23 February 2015, I informed you that the decision maker had determined that there was a requirement to consult with a third party under section 27 [Consultation – business documents] 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 10 April 2015.

6. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

7. Ms Patricia Clifford, Director of Coordination, Communication and Security, Joint Logistics Command was the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

8. Ms Clifford identified one document relevant to the request. This was the 'External Review Defence Fuel Supply Chain & Remediation Program' (known as the Wraith Review) dated 31 December 2013, authored by Mr Andrew Wraith, Lead Consultant Spectrum Energy P/L. In this document, only the content of the conclusion and recommendations sections on pages 9-14 are within the scope of the request.

Decision

9. Ms Clifford decided to release the document with deletions made 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 sections 33 [Documents affecting national security, defence or international relations], 47C [public interest conditional exemptions - deliberative processes] and section 47D [public interest conditional exemptions - financial or property interests of the Commonwealth] of the FOI Act.

Material Taken Into Account

10. Ms Clifford had regard to:
- a. the terms of the request;
 - b. the content of the documents in issue;
 - c. the relevant provisions of 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. comments provided by parties with information relevant to the context or contents of the document.

Consultation

11. Section 27(1)(a) of the FOI Act states that documents containing business information belonging to a third party must not be released to an applicant unless consultation with the third party has taken place.

12. When consulted, Mr Wraith of Spectrum Energy P/L did not raise any objections to the release of the document but offered the following comments:

- f. the document was written in late 2013 and significant steps have been taken to improve the fuel supply chain.

- g. not all the recommendations were endorsed.
- h. the document contains Department of Defence commercial in confidence information such as proposed future contracting initiatives and budget information.
- i. the interpretation of risk mentioned in the document requires careful consideration to ensure the information is used correctly.

13. Taking this into account, further clarifying information has been provided below.

REASONS FOR DECISION

Section 33 – Documents affecting national security, defence or international relations

14. Sections 33(a)(i) and (ii) of the FOI Act relevantly provide that:

‘A document is an exempt document if disclosure ...would or could reasonably be expected to cause damage to... the security... (and/or)... the defence of the Commonwealth...’

15. Ms Clifford found that the pages of the document detailed below contained information pertaining to Defence capability and that the release of this information would or could cause damage to the defence and/or security of the Commonwealth in that it relates to Defence’s fuel reserves, capacities and contingency stocks:

- j. Page 12 – elements of recommendation 9, first paragraph;
- k. Page 13 – part of the first and second paragraphs and all of the fourth paragraph of recommendation 12;
- l. Page 14 – second and third paragraphs of recommendation 13; and
- m. Page 14 – first to fifth dot points of the first paragraph of section 2.4.

16. Ms Clifford determined that the release of this information may be able to be used to identify Defence’s capacity to mount and sustain operational activities or provide information which may compromise the security of existing fuel stores and the transportation of fuel. Accordingly, she found that this information is exempt under sections 33(a)(i) and (ii) of the FOI Act.

Section 47C – Public interest conditional exemptions - deliberative Processes

17. Under section 47C(1) of the FOI Act, information is exempt which, if disclosed, ‘would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place ... for the purpose of, the deliberative processes involved in the functions of ... an agency...’.

18. Ms Clifford found that the pages of the document detailed below contained information regarding recommendations relating to remediation of or improvements to the operation or management of the Defence Fuels Supply Chain which are still being deliberated by the Department of Defence and so are exempt under section 47C of the FOI Act:

- n. Page 9 – section 2.2, second dot point;
- o. Page 11 – recommendation 7, second and third paragraphs;
- p. Page 12 – recommendation 9, second paragraph, and subparagraph 2 of the third paragraph;
- q. Page 13 – recommendation 11 in full and fourth paragraph of recommendation 12; and
- r. Page 14 – section 2.4, first to fifth dot points of the first paragraph.

Section 47D – Documents affecting the financial or property interests of the Commonwealth

19. Section 47D provides that:

‘A document is conditionally exempt if its disclosure under the FOI Act would have an adverse effect on the financial and property interests of the Commonwealth...’.

20. Ms Clifford found that the pages of the document detailed below contained information and opinions about the status of Defence financial and property interests:

- s. Page 9 – section 2.2, second dot point;
- t. Page 13 – recommendation 11 in full;
- u. Page 13 – part of the first paragraph and all of the fourth paragraph of recommendation 12; and
- v. Page 14 – section 2.4, first to fifth dot points of the first paragraph.

21. When considering this information, Ms Clifford took into account the guidelines issued by the OAIC which note that the financial and property interests of the Commonwealth may encompass an indirect effect. She found that the release of the information is likely to have an adverse effect on the financial and property interests of the Commonwealth in that it may prejudice the ability of the Commonwealth to pursue its commercial objectives. Specifically, the release of this information may compromise Defence’s ability to achieve value for money through future contracting activities with industry and local governments in that it may provide an indication of the level of funding which could be directed into future supply contracts or infrastructure works. Accordingly, Ms Clifford was satisfied that the information is exempt under section 47D.

Public interest test – Sections 47C and 47D

22. Documents which are conditionally exempt must be disclosed unless they meet the public interest test in section 11A(5) of the Act.

23. As sections 47C and 47D are conditional exemptions, Ms Clifford applied the public interest test to determine whether disclosure of the information would be contrary to the public interest. She took into account the following public interest factors in favour of and against disclosure and those which are irrelevant under section 11B of the FOI Act:

Relevant Factors in Favour of Disclosure

- a. promoting the objects of the Act (refer sections 3 and 3A);
- b. informing debate on a matter of public importance; and
- c. promoting effective oversight of public expenditure.

Relevant Factors Against Disclosure

- d. preserving the efficient and proper functioning of government;
- e. protecting the integrity of the decision making process by separating the final decision making policy from the opinions and advice of the officials who contributed to the consideration; and
- f. preserving the ability of the Commonwealth to achieve value for money in relation to future contracting and infrastructure investment activities.

Irrelevant Factors

- g. embarrassment to the Commonwealth or a loss of confidence in the Commonwealth;
- h. misinterpretation or misunderstanding of the document by any person; and
- i. confusion or unnecessary debate.

24. In relation to the information identified to which sections 47C and 47D apply, Ms Clifford found that the factors against disclosure outweigh the factors in favour of disclosure. This is on the basis that this information would make only a minimal contribution to informing public debate and governmental accountability but would potentially have a significant impact on the Commonwealth's ability to effectively manage its financial and property interests. Accordingly, she was satisfied that the information is exempt under section 47C and 47D of the FOI Act.

25. While not a consideration for the application of exemption provisions under the FOI Act, some information contained in the document could be misconstrued or cause confusion when considered in isolation. This particularly applies to section 2.2 on page 9. Therefore, contextual and clarifying information has been provided in the following paragraphs.

Further Information – Clarifying Information

26. The 'Wraith Review' was commissioned by Defence to obtain an independent Oil Industry perspective of how a Fuels Supply Chain is operated and maintained in comparison to the Defence Fuel Supply Chain. Given that it was completed in December 2013, some of the information contained in the document, particularly relating to risk, is somewhat dated. Some information is also the independent assessment of an external party and does not necessarily reflect, or accurately take into account, the operational and preparedness requirements of Defence.

27. **Section 2.2 – Conclusions.**

- a. **Work, Health, Safety and Environment (WHSE) Risks.** In relation to statements regarding extreme WHSE risks, all of the Immediate Action items in the Wraith Review are being implemented. For example, the Stokes Hill Defence Fuel Installation in Darwin was permanently closed during 2014 and a national Permit to Work system is being implemented across all Defence Fuel Installations.
- b. **Fuel Reserves.** The report asserts that Defence is holding fuel reserves that are unnecessary to meet capability needs and implies that this operates outside the Chiefs of Service policy on reserve holdings. Fuel reserve holdings are determined based on a range of operational, commercial and supply chain management considerations and agreed in conjunction with capability managers and in accordance with current Defence policies. Defence is considering this opinion as part of the Force Structure Review, along with a range of other potential initiatives, to ensure both operational resilience and further utilisation of industry resources where appropriate.
- c. **Defence Management of Fuels.** The report raised concerns that independent actions by Groups and Services potentially constrained future flexibility with respect to fuels management. Defence has addressed this through the appointment of Commander Joint Logistics in February 2014 as the Head of the Defence Fuels Supply Chain and the single accountable authority for its operation.
- d. **Remediating Facilities that ought to be closed.** The report asserts that Defence assets are significantly underutilised and present potential opportunity to reduce Defence costs and provide income. Defence is considering this opinion as part of the Force Structure Review.

28. **Status of ‘Wraith Review’ Recommendations.** The current status of the recommendations contained in the document is:

- a. **Immediate Actions.** All four recommendations have been agreed by Defence and are currently being implemented. Defence also chose an additional two recommendations from the report to constitute Immediate Action. The status of these additional two recommendations is contained in the summary of Strategic Actions below:
 - a. Shutdown DFI-M Stokes Hill, DFI-A FF4 RAAF Darwin and one other site (Strategic Item 12).
 - b. Temporarily suspend the fuels elements of the current DSRG BSR retender until the source selection is reviewed (rapidly) to ensure fuel element supplier competence. If the tendered offers are not appropriate, then terminate the current process and retender Fuels services separately to ensure oil industry expertise (Strategic Item 6).

b. Strategic Actions.

- a. Recommendations 1 to 4 have been implemented.
- b. Recommendation 5 has been agreed and implementation is in progress.
- c. With the exception of the DSRG Base Services Re-tender retender process, Recommendation 6 is agreed and implementation is in progress.
- d. Recommendation 7 is not agreed.
- e. Recommendations 8 to 11 are under consideration as part of the Force Structure Review.
- f. Recommendation 12 has been implemented with the exception of the recommendation to shutdown one other site. This is being considered as part of the Force Structure Review. and
- g. Recommendation 13 is under consideration as part of the Force Structure Review.

Payment of Charges

29. As outlined above, my email dated 13 February 2015 imposed a charge of [REDACTED] Upon completion of the request the actual amount for processing exceeded the estimated amount. However, the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full.

30. Further, on this occasion, I have decided to amend my decision regarding the imposition of charges and have decided to waive all processing charges for this request.

31. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights" is at Enclosure 1.

FOI Disclosure Log

32. 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 will publish the identified documents relating to this request within five working days of receipt by you. Defence will also publish this decision notice with privacy deletions.

Further advice

33. The FOI Act can be accessed online at: <http://www.comlaw.gov.au/Details/C2015C00013>.

34. Should you have any questions, please contact this office.

Yours sincerely



Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

10 April 2015

Enclosure:

1. Fact Sheet: Freedom of Information – Your Review Rights