



Our reference: FOI 247/14/15

By email: [REDACTED]

Dear [REDACTED]

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

1. I refer to your email, dated 13 February 2015, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

*“...all correspondence since 1 January 2010 in relation to any potential transfer, sale or development of the site known as 11 Mile Antenna Farm in the Northern Territory.”*

2. On 6 March 2015, you decided to proceed with the following revised scope:

*I seek access to:*

- 1. the most recent ministerial submission regarding the potential sale, transfer or development of the site known as 11 Mile; and*
- 2. letters from potential purchasers with regard to proceeding (or otherwise) with the purchase.*

*I do not require duplicate or draft documents.*

### **Background**

3. On 10 March 2015, I provided you with the preliminary assessment of FOI Charges relating to your revised request. The charges were formally imposed on 26 March 2015. As such, the statutory deadline for processing your request was 21 April 2015.

4. On 9 April 2015, our office informed you that the decision maker had determined that there was a requirement to consult with a third party under section 26A [Consultation – documents affecting Commonwealth-State relations etc] 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 21 May 2015.

5. 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**

6. Ms Linda McCann, Director, Freedom of Information, was the accredited decision maker, under the FOI Act, in relation to your request.

### **Documents identified**

7. Ms McCann advised that a total of three documents were identified as relevant to this request. Specifically Serials:

1. Letter & attachments totalling 32 pages from the Northern Territory Government, undated.
2. Ministerial Submission ASPM/OUT/2013/AF13190364 dated 14 Feb 13, including attachments A – D.
3. Letter dated 17 November 2014 from Northern Territory Government to Defence.

### **Decision**

8. Following examination of the documents and after consulting with a third party, Ms McCann decided to:

- a. deny access to Serial 1 under section 47B [public interest conditional exemptions – Commonwealth-State relations etc.] of the FOI Act; and
- b. partially release Serials 2 & 3 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 conditionally exempt under sections 47B and/or 47F [public interest conditional exemptions – personal privacy] of the FOI Act.

### **Material taken into account**

9. In making the decision, Ms McCann had regard to:

- a. the terms of the FOI request;
- b. the content of the documents in issue;
- c. relevant provisions in the FOI Act;
- d. Defence guidance material on the FOI Act and 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 a third party.

## Reasons for Decision

### Section 47B

10. Ms McCann found that the documents identified as Serials 1 & 3 contained information that was communicated, in confidence, between Defence and the Northern Territory (NT) Government.

11. Section 47B states:

*A document is conditionally exempt if disclosure of the document under this Act:*

*(a) would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*

*(b) would divulge information or matter communicated in confidence by or on behalf of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth; ...*

12. In deciding whether 47B(a) applied, Ms McCann considered whether Defence currently has, and could be expected to maintain, a working relationship with the NT Government. She was satisfied that there is a Commonwealth-State relationship that could be in jeopardy if material were to be released without the explicit agreement of the State. She also had regard to the NT Government's claim that release of the material could cause damage to current and future relations between the Commonwealth and the State with regard to land release projects.

13. In regards to section 47B(b), the guidelines state that, when assessing whether the communication was in confidence, the test is whether the communication was considered to be confidential at the time. The guidelines also state that the circumstances of the communication may also need to be considered, such as:

- whether the communication was ad hoc, routine or required;
- whether there were any existing, implied or assumed arrangements or understandings between the Commonwealth and State concerning the exchange or supply of information; and
- how the information was subsequently handled, disclosed or otherwise published.

14. The documents in question contain information regarding negotiations, which are confidential projects of the NT Government. The material was required as a part of the potential purchase process. Ms McCann was satisfied that material of this nature is handled, by both organisations, in a confidential manner and did not consider that the material is likely to be published.

### Section 47B – Public interest considerations

15. Ms McCann would like to note that conditionally exempt documents carry a public interest test. She considered section 11B of the FOI Act, which sets out factors favouring access and irrelevant factors when considering the public interest test.

16. Subsection 11B(3) states *factors favouring access to the document in the public interest include whether access to the document would do any of the following:*

- (a) promote the objects of this Act*
- (b) inform debate on a matter of public importance*
- (c) promote the effective oversight of public expenditure; and*
- (d) allow a person to access his or her own personal information.*

17. In assessing whether disclosure would be, on balance, contrary to the public interest, Ms McCann considered the range of factors set out in section 11B(3) [public interest exemptions – factors] of the FOI Act, which favours access to a document. Disclosure may promote some of the objects of the FOI Act, as information held by the Government is a natural 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.

18. Ms McCann would like to note that while release of this material may be of some interest to you, she was not aware of any way that disclosure of the specific conditionally exempt material is likely to inform public debate on any matter of public importance in any meaningful way.

19. While disclosure of the information may relate broadly to public expenditure, Ms McCann was not convinced that it is in the public interest for Defence to reveal that information without agreement. In coming to her decision, she also considered subsection 11B(4) of the FOI Act.

20. Finally, Ms McCann considered that maintaining the integrity of the processes in place between Defence and the State authority far outweighs any interest that may be served from the disclosure of the specifically exempt material. As such, she decided it would be contrary to the public interest to release the conditionally exempt material and decided to exempt that material under subsections 47B(a) & (b) of the FOI Act.

### **Section 47F – Personal Privacy**

21. Upon examination of the documents, Ms McCann identified information, specifically signatures belonging to people other than you. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, she 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.

22. Against those criteria, Ms McCann found that:

- (a) the specific personal information is not well known to the general community;
- (b) the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- (c) the specific information is not readily available from publicly accessible sources.

23. Noting the findings against the above criteria, Ms McCann decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than you. Accordingly, she considered this material to be conditionally exempt under section 47F of the FOI Act.

24. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

### **Section 47F - public interest considerations**

25. Ms McCann considered that the public interest in promoting the objects of the Act have been satisfied as, in her opinion, removing signatures from the document does not detract from public disclosure of government-held information.

26. Ms McCann did not consider that the final two considerations were relevant in this instance as the information does not deal with public expenditure or relate to the applicant's own personal information.

27. Taking all of the above into consideration, on balance, Ms McCann considered that disclosure of the signatures would be contrary to the public interest.

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

29. Accordingly, Ms McCann considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of this request. Therefore, she decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

### **Payment of Charges**

30. In our email letter, dated 10 March 2015, after deducting the free decision making time, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request as discussed above.

31. In this instance, I have decided to exercise my delegation to cap the charges payable to the deposit amount already paid. Accordingly, on this occasion you are not required to pay any further charges for the processing of your request. Documents in the form approved for release are at Enclosure 1.

### **Rights of review**

32. 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 2.

## **FOI Disclosure Log**

33. 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 the applicant. Defence will also publish this decision notice with privacy deletions. This request will be published on the Defence FOI Disclosure Log on 28 May 2015.

### **Further advice**

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

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

Yours sincerely



On behalf of  
Theresa Stinson  
Assistant Director – Media Case Management  
Freedom of Information

21 May 2015

Enclosures:

1. Documents in form approved for release
2. Fact Sheet: Freedom of Information – Your Review Rights