FOI 252/15/16 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:

"SWS0979 - Point Perpendicular Lighthouse Structural Maintenance - 6 DEMS Documents

excluding personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request."

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified 6 documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents, which will be provided when the documents are released (refer to below for further information).

5. I have added an FOI Item number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

a. release four documents in full; and
b. partially release two documents on the grounds that the deleted material is considered exempt under section 47G [public interest conditional exemptions-business affairs] of the FOI Act.

Material taken into account

7. 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; and

d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).
Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

8. Section 22 of the FOI Act provides that if an agency or Minister decides to:
   (i) refuse access to an exempt document; or
   (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access;

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

9. Considering all of the above, I decided that it was reasonably practicable to remove the irrelevant material, specifically the mobile numbers and signatures of Defence officials, as stated in the scope of your request and release the document in that form.

Section 47G – Business affairs

10. Upon examination of the documents, I identified information, specifically the amount the company was paid to complete the Point Perpendicular Lighthouse structural/maintenance works.

11. 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...

12. 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. The reasonable expectation refers to material regarding details of present and future lighthouse maintenance contracts.

13. I am satisfied that the expected effect of disclosing to you material identified exempt under section 47G could have an adverse effect on the company as disclosure of the price and the way the company was paid could diminish the competitive nature and could impact on the profitability of the business operation. The price that the company charged may have also been achieved following commercial contract negotiations between the Commonwealth and preferred tenderer, which in themselves are commercial-in-confidence. Any disclosure of the amount paid or how that amount was paid may also put at risk the Commonwealth’s ability to negotiate favourable contractual conditions with the same supplier.

14. 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.
Public interest – section 47G

15. I found that the identified documents are conditionally exempt under sections 47G of the FOI Act. 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’.

16. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and release of this information may increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

17. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

   a. an agency’s ability to obtain similar information in the future; and
   b. the competitive commercial activities of an agency;

18. Accordingly, I considered 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 under section 47G of the FOI Act.

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

Yours sincerely

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Ms Berceuse Bindle
Accredited Decision Maker
Associate Secretary Group

20 April 2016