



**FOI 296/15/16 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:

*“The contract awarded to Macroeconomics.com.au PTY LTD as a result of tender reference DMOCIP/RFT 0315/2012*

*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 one document as matching the description of the request.

**Decision**

4. I have decided to partially release one document, on the grounds that the deleted material is considered exempt under section 47G [Business Affairs] 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 document 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 from officials within Defence Industry Branch.

**Reasons for decision**

**Section 22 – Edited copies with exempt or irrelevant matter deleted**

6. 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.

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

### **Section 47G – Business Affairs**

8. Upon examination of the document, I identified information, specifically the rates and amounts paid at each phase of the Project and intellectual property of the contractors.

9. 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...*

10. 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.

11. I am satisfied that the expected effect of disclosing material identified as exempt under section 47G could have an adverse effect on the company as disclosure of the payment schedule and intellectual property of the contractors could diminish the competitive nature and could affect the profitability of the business operation by releasing information on how the report was created and what software and models were used. It would show competitors how the company assigns costs to each stage of similar projects, allowing other companies to potentially use this information in their own negotiations, and thus disadvantaging these contractors.

12. 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. 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’.

### **Sections 47G - Public interest considerations**

13. 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). It would also promote effective oversight of public expenditure.

14. 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 the agency’s ability to obtain similar information in the future and harm the interests of a group of individuals, in this case the contractors.

15. As outlined in paragraph 11 above, releasing commercial-in-confidence information of the contractors is likely to harm their commercial interests, which in turn is likely to make future tenderers more reluctant to provide the information to Defence. This would mean that Defence would have less detail of both how the costs of the project will be spread over financial periods or phases of the project, but also less detail on what specific resources will be used to ensure that the outcomes of the contract are achieved. It will therefore be more difficult for Defence to evaluate the proposed resources being assigned to a project and compare the tender options of various tenderers to achieve the best value for money for the Commonwealth.

16. I do not believe that the removal of the payment schedule and intellectual property used by the contractor significantly detracts from the value of the document being sought by the applicant.

17. 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 under section 47G of the FOI Act.

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

Yours sincerely

A rectangular grey box redacting the signature of Natalie Carpenter.

Natalie Carpenter  
Accredited Decision Maker  
Associate Secretary Group

4 April 2016