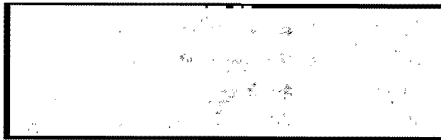




Our reference: FOI 297/14/15



By email: 

Dear 

NOTICE OF DECISION ON FREEDOM OF INFORMATION REQUEST

1. I refer to your email of 26 March 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

USA and Australian DoD, Agreement 498030 [Item 1]

I am also looking for funding and staffing details for the related project "Biomarkers for Mild Traumatic Brain Injury, Blast Injury and Post Traumatic Stress Disorder". Specifically the names of researchers who have worked on the project. [Item 2]

Background

1. On 31 March 2015 I wrote to advise you of the preliminary assessment of charges associated with your request. The statutory processing time for the request was suspended on this date. Your letter agreeing to pay charges for the processing was received in this office on 2 April 2015.
2. On 19 May 2015 our office informed you that the decision maker had determined that there was a requirement to consult with third parties under section 27 [Consultation – documents affecting business] 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 27 of the FOI Act, the statutory timeframe was amended to **1 July 2015**.
3. 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

4. Mr Ben Green, Assistant Director Coordination, Defence Science and Technology Organisation, is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

5. Mr Green identified two documents as matching the description of your request. When the documents are released you will notice that for ease of reference and for the purpose of processing this request, the decision maker has added an FOI Item number to each of the documents.

Decision

6. Mr Green has decided to partially release the documents 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 47F [personal privacy] [Item 1] or 47G [Business Affairs] [Item 2] of the FOI Act.

Material taken into account

7. In making his decision, Mr Green had regard to:
- a. the content of the documents in issue;
 - b. relevant provisions in the FOI Act;
 - c. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
 - d. *Principles on open public sector information* issued by the Information Commissioner; and
 - e. third party responses received in the formal consultation process.

Reasons for decision**Section 22 (Irrelevant)**

8. Upon examination of the documents Mr Green found that the document identified as Item 2 contained material regarding matters which do not relate to the funding and staffing of the project. Mr Green considered that the material would disclose information that would reasonably be regarded as irrelevant to the scope of your request. As such, in accordance with subparagraph 22(1)(a)(ii) of the FOI Act, he has decided to remove the material.

Section 47F - Personal Privacy

9. On review of the documents, Mr Green found that they contained personal information, including names and signatures, the disclosure of which would constitute the unreasonable disclosure of personal information. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information Mr Green 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 publicly accessible sources.

10. Against those criteria, Mr Green found that:

- a. the specific personal information is not well known; and
- b. the information is not readily available from publicly accessible sources.

11. After careful consideration of the above factors, Mr Green decided that, on balance, the disclosure of this material would involve the unreasonable disclosure of personal information belonging to a person other than you and it is therefore conditionally exempt under section 47F of the FOI Act.

12. 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. The public interest considerations for section 47F are outlined below.

Public interest considerations - Section 47F

13. In assessing whether the disclosure of the identified personal information is contrary to the public interest, Mr Green considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. Mr Green noted that that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, Mr Green considered disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

14. Mr Green noted that release of the material may be of some interest to you. However, it would not inform public debate on any matter of public importance in any meaningful way.

15. Mr Green also considered subsection 11B(4) [Public interest exemptions – 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 Mr Green took into account were listed under subsection 11B(4) of the FOI Act.

16. Based on the above, Mr Green considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information. Therefore, Mr Green decided that it would be contrary to the public interest to release information considered exempt under section 47F of the FOI Act.

Section 47G - Business

17. Upon review, Mr Green found that the identified document contained information concerning the;

- a. business affairs regarding a third party, namely Newcastle Innovation Limited ('the contractor');
- b. individual persons - information about the person's business or professional affairs who are involved in the project;
- c. sensitive information about the business including the research plans, commercial or financial affairs with regards to funding and resource commitments of the contractor; and
- d. commercially sensitive information regarding the research plans.

18. Mr Green considered that the disclosure of this information could allow a competitor or another person to determine the funding regime and identified personnel with specialist skills related to the project that the contractor is prepared to accept in providing services, and may be used against their commercial interests in other negotiations. Further, Mr Green considered that whilst the contractor may be prepared to document this information with the Commonwealth it may not wish for this information to be made publically available. As such, the inappropriate release of business affairs by the Commonwealth could have an adverse affect on the future ability of negotiations between both parties, and therefore, prejudice supply to the department. Therefore, Mr Green considered that the information, if released, would adversely affect the contractor in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

Public interest considerations – section 47G

19. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released, unless, in the circumstances, access to that document would, on balance, be contrary to the public interest.

20. In considering subsection 11B(3) of the FOI Act, Mr Green again noted that disclosure of the identified document may promote the objects of the FOI Act, by granting access to government held information. Mr Green considered that disclosure of the specific conditionally exempt material would not inform debate on a matter of public importance, nor promote effective oversight of public expenditure, other than that already published in the public domain.

21. Mr Green considered the position of the third party, and formed the view that disclosure of their business information would directly impact on the profitability of the contractor, and further, it would also affect their ability to maintain a competitive advantage over their competitors. The release of the information could or may:

- a. lead to loss of valuable intellectual property which has been kept as a trade secret / confidential to date;
- b. impact on the commercial discussions with various partners in relation to the listed patents and from any potential outcomes from this project;
- c. provide competitors or other persons skilled in the field to use the information to their advantage thereby negatively impacting on the ability of the contractor to retain competitive edge as the first group to be undertaking such ground breaking research;
- d. by disclosing names listed associated with the project, provide an opportunity for anyone having access to this information to contact the individuals independently and this may have unwarranted consequences on the project and its anticipated outcomes; and
- e. impact on our ability to benefit from potential commercial success and other benefits we anticipate from this project.

22. Mr Green considered that it is in the public interest that Defence does not disclose sensitive proprietary information of other companies or organisations, as this may not only adversely affect their lawful business and commercial affairs, but also affect their further dealings and prejudice supply to the department.

23. Accordingly, Mr Green considered that, on balance, the public interest factors against disclosure outweighed the factors for disclosure of the document that match the scope of the request. Therefore, Mr Green decided that it would be contrary to the public interest to release the information considered to be exempt under paragraph 47G of the FOI Act.

Declassification of documents

24. The documents matching the scope of this request were classified. The decision maker has declassified the versions of the documents that are approved for release.

Payment of Charges

25. In our letter, dated 31 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 and an invoice for the preliminary assessment deposit of [redacted] was subsequently sent directly from Defence Finance.

26. Upon completion of your request, after deducting the free decision making time, the actual amount for processing was calculated to be [redacted]. The remaining balance is the difference between actual charges and the deposit you have already paid. Accordingly you are required to pay the remaining [redacted] in order to finalise your request. Please find attached at Enclosure 1 a Payment Authorisation Form for the balance. Once you have completed the form please return it to foi@defence.gov.au.

Rights of review

27. 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

28. 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

29. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2015C00013>.

Yours sincerely



Andrea Sansom
Assistant Director
Freedom of Information

18 June 2015

Enclosures:

1. Freedom of Information Payment Authorisation Form
2. Fact Sheet: Freedom of Information – Your Review Rights