



Australian Government
Department of Defence

Reference: FOI 320/17/18

FOI 320/17/18 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:

"In respect of the New Air Combat Capability (NACC) Facilities Project at the RAAF Base at Williamstown, New South Wales ("the Project"), being Defence Project no. R8000, I request copies of:

1. *Each tender received by Lend Lease Pty Ltd (Lend Lease) or the Department of Defence, for the trade package described as "WE02 Concrete Structure Package" in relation to the Project (the Trade Package).*
2. *Any communication (including but not limited to emails, letters, facsimiles, memoranda) between Lend Lease and the Department of Defence, relating to, recording, or referring to any tenders received for the Trade Package, including but not limited to communication in respect of:*
 - *the approval or acceptance of the tender(s); and*
 - *the comparison of the tenders.**("Communication")*
3. *All documents (including but not limited to file notes, emails, letters, facsimiles, memoranda) relating to, recording, or referring to any Communication.*
4. *Insofar as these documents do not constitute documents under items 2 and 3 above, all documents relating to, recording, or referring to Lend Lease's or the Department of Defence's consideration, approval or acceptance of the tender for the Trade Package.*

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

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 71 documents as matching the description of the request.

Decision

4. I have decided to:
 - a. partially release 9 documents 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 section 47F [public interest conditional exemptions-personal privacy] and/or section 47G [public interest conditional exemptions-business] of the FOI Act;
 - b. deny access to 62 documents of the request under section 47F [Public interest conditional exemptions – personal privacy] of the FOI Act, and under section 47G [Public interest conditional exemptions – business] of the FOI Act.
 - c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) 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 documents 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 received following consultation with other affected parties.

Reasons for decision

Sections 47G - Public interest conditional exemptions - business

6. Where access has been denied under section 47G of the FOI Act, I considered that the material would, or could reasonably be expected to, have an adverse effect on the business affairs of all of the businesses concerned.
7. 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*
 - b. *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.*”
8. Upon examination of the documents I found that they contained information of a commercial value that may be considered exempt. The Guidelines, paragraph 5.202, provide that the information must satisfy two criteria:
 - *the document must contain information that has a commercial value to an agency or to another person or body; and*
 - *the commercial value of this information would, or could reasonably be expected to be, destroyed or diminished if it was disclosed.*

9. I also had regard to the Guidelines, paragraph 5.203, which outlines factors which may assist in deciding in a particular case whether information has commercial value. Factors include:

- *whether the information is known only to the agency or person for whom it has value or, if known to others, to what extent that detracts from the intrinsic commercial value;*
- *whether the information confers a competitive advantage on the agency or person to whom it relates (for example, if it lowers the cost of production or allows access to markets not available to competitors);*
- *whether a genuine ‘arms-length’ buyer would be prepared to pay to obtain that information;*
- *whether the information is still current or out of date (out of date information may no longer have any value);*
- *whether disclosing the information would reduce the value of a business operation or commercial activity – reflected, perhaps, in a lower share price.*

10. In examining the documents I found that they contained information relating to the business affairs, processes, methodologies, pricing and financial matters, all of a sensitive nature, to be exchanged between the other businesses and the Department of Defence. I am satisfied that this information has commercial value consistent with the Guidelines and if released would, or could reasonably be expected to, destroy or diminish the commercial value of the businesses named.

Sections 47F - Public interest conditional exemptions – personal privacy

11. Where access has been denied under section 47F of the FOI Act, I considered that the material would constitute an unreasonable disclosure of personal information belonging to other people than the applicant.

12. Section 47F of the FOI Act states “(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).”

13. In relation to unreasonable disclosure of personal information, the Guidelines, at paragraph 6.138, provide that “The personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.”

14. In determining whether the disclosure of the document would involve an unreasonable disclosure of personal information, I 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 publically accessible sources.

15. Upon examination I identified information, specifically information that would readily identify individuals, their employment history/experience and specific technical abilities, belonging to persons other than the applicant. In addition I found that this information is not readily available from publically available sources, nor is the information well-known. This material satisfies the definition of personal information in section 47F of the FOI Act.

16. In light of the above, I have decided that the specified material identified is in fact conditionally exempt pursuant to section 47F of the FOI Act.

Section 22 (where documents are being denied in full)

17. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions.

18. The department is required to advise the third parties of my decision. Documents will be provided when all review rights have been exercised.

Marcus.Smith
Digitally signed by Marcus.Smith
DN: c=AU, o=GOV, ou=DoD,
ou=PKI, ou=Personnel,
cn=Marcus.Smith
Date: 2018.06.12 15:59:36 +10'00'

Marcus Smith
Accredited Decision Maker
Estate and Infrastructure Group