



Our reference: FOI 342/14/15

[Redacted]

By email: [Redacted]

Dear [Redacted]

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

1. I refer to your email, dated 27 April 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*“...the instructions provided to RAND by the Department of Defence for the Australia's Naval Shipbuilding Enterprise Preparing for the 21st Century report. This could include (but is not limited to) a charter, terms of reference, scope document etc...”*

### **Background**

2. 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**

3. Mrs Glenva Parker, Director Global Strategy, Strategic Policy is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

### **Documents identified**

4. Mrs Parker identified one document as matching the description of your request. Documents in the form approved for release are at Enclosure 1.

### **Decision**

5. Mrs Parker has decided to partially release the document with deletions made in accordance with subsection 22(1) [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 47G [Business affairs exemption] of the FOI Act.

## Material taken into account

6. In making her decision Mrs Parker 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. the Principles on open public sector information issued by the Information Commissioner.

## Reasons for decision

### Exemption claim – section 47G of the FOI Act

7. Upon examination of the documents, Mrs Parker identified commercially-sensitive financial data. She considered that the disclosure of this material would, or could reasonably be expected to unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

8. The guideline issued by the Australian Information Commissioner notes that the business conditional exemption applies if disclosure of information (business 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, *would, or could reasonably be expected to unreasonably* affect the 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.

9. In accordance with subsection 47G(1), in determining whether the disclosure of this information would involve the unreasonable effects upon that organisation or undertaking in respect of its lawful business, Mrs Parker had regard to:

- a. the relevance to the business, commercial or financial affairs of an organisation or undertaking;
- b. the extent to which the information is well known;
- c. the availability of the information from publicly accessible sources;
- d. the likelihood of the predicted or forecast event, and an objective assessment of the expected adverse effect or damage occurring after disclosure of a document; and
- e. any other matters that the agency considers relevant.

10. Against those criteria, Mrs Parker found that:

- a. the specific financial information concerning milestone payments and daily rates is relevant to the commercial affairs of the organisation;
- b. the specific financial information concerning milestone payments and daily rates is not well known nor publicly accessible; and
- c. the release of milestone payments and daily rates would reveal the costs and work effort associated with the conduct of the entities business which would be expected to have an adverse effect or damage upon the business' competitive and commercial advantage.

### **Public interest considerations – section 47G**

11. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest. The Guidelines state (at 6.8-6.9):

*...The term ‘public interest’ is necessarily broad and non-specific because what constitutes the public interest depends on the particular facts of the matter and the context in which it is being considered...*

*To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies, based on the particular facts of the matter at the time the decision is made.*

12. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Mrs Parker considered the range of factors that favour access to a document set out in subsection 11B(3) [public interest exemptions – factors favouring access] of the FOI Act.

13. Mrs Parker noted that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. She noted that the release of this 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. Additionally, it would not increase public participation in Government processes, nor promote effective oversight of public expenditure, other than that already published in the public domain. Mrs Parker also 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.

### **Irrelevant factors – section 11B (4)**

14. In coming to the above decision, Mrs Parker 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 Mrs Parker took into account were listed under subsection 11B(4) of the FOI Act.

15. Accordingly, Mrs Parker considers that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the documents. Therefore, she has decided that it would be contrary to the public interest to release the information considered under subsection 47G(1) of the FOI Act.

### **Rights of review**

16. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, “Freedom of Information – Your Review Rights”, setting out your rights of review is at Enclosure 2.

**Further information**

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

18. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Sansom'.

Andrea Sansom  
Assistant Director  
Freedom of Information

19 May 2015

Enclosures:

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