



FOI 360/15/16 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:

Item 1 assessments made by Defence Strategic Policy & Intelligence Group in relation to the long-term lease of Darwin port and/or related sale of the port operator, since 2013.

Item 2 Briefing material prepared for the Minister for Defence and Defence DEPSEC/Military Equivalents and above in relation to the impact of the long-term leasing of Darwin port and/or privatisation of the port operator on defence operations and the defence establishment, since 2013.

...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 accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

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

Decision

4. I have decided to:
- partially release the three documents in accordance with section 22(1)(a)(i) [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 47B [public interest conditional exemptions - Commonwealth-State relations etc.], 47D [public interest conditional exemptions - financial or property interests of the Commonwealth] and/or 47G [public interest conditional exemptions – business] of the FOI Act;
 - irrelevant material as referred to in the scope of the request has been removed in accordance with section 22(1)(a)(ii) of the FOI Act.

Material taken into account

5. In making my decision, I had regard to:
- the terms of the request;
 - the content of the identified documents in issue;
 - 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);
- e. response to Commonwealth-State consultation.

Reasons for decision

Public interest conditional exemptions

Section 47B – Commonwealth- State relations

6. In reviewing the documents I found that a document containing information that was communicated, in confidence, between Defence and the Northern Territory Government (NTG).

7. In deciding whether section 47B(a) applied, I considered whether Defence has, and could be expected to maintain, a working relationship with the NTG. I am satisfied that there is a Commonwealth-State relationship that could be in jeopardy if material were to be released without the explicit agreement of the State. Accordingly, I considered it necessary to consult with the NTG on the document in the form I proposed to release.

8. Taking into account, that the relationship at hand may be considered to be continuing, I considered that disclosure of some of the material contained in the document would cause damage to the Commonwealth-State relations if it were released and the material is therefore conditionally exempt under section 47B of the FOI Act.

Section 47D– Financial or property interests of the Commonwealth

9. In reviewing the documents I found that a document containing information relating to the Commonwealth's access to Australian ports.

10. I am satisfied that disclosure of some of the material contained in the document would cause a substantial adverse effect on the financial interests of the Commonwealth if it were released. The release of the material would result in the Commonwealth being not able to achieve the best value for money in future contracts. I consider the material is herefore conditionally exempt under section 47D of the FOI Act.

Section 47G - Public interest considerations

11. In reviewing the documents I found that some of the documents contained information relating to a proposal for consideration by the Foreign Investment Review Board.

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.

13. I am satisfied that the expected effect of disclosing material identified as exempt under section 47G would have an adverse effect on the respondent as disclosure of their business information could diminish their competitiveness and could affect their business operations.

14. I have decided that the specific information is conditionally exempt under section 47G of the FOI Act.

Public interest considerations – Sections 47B, 47D and 47G of the FOI Act

15. Section 11A(5) of the FOI Act provides that, if a documents 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. In assessing whether disclosure is on balance, contrary to the public interest, I considered the range of factors set out in section 11B(3) of the FOI Act, which favours access to a document. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the government is a national resource. However, the disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, now would it increase scrutiny or discussion of Defence activities.

17. While I consider that release of the material may be of some interest to the applicant, disclosure of the specific conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

18. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

19. In finalising this decision, I took into account the response to formal consultation from the Northern Territory Government and consider that maintaining the integrity of the processes in place between Defence and a State authority far outweighs any interest that may be served from the disclosure of the conditionally exempt material. I further note that the guidelines, at paragraph 6.39, set out examples of the damage the disclosure of the document may cause. Of significance to this matter I found the following factors:

- *adversely affecting the administration of a continuing Commonwealth-State project*
- *adversely affecting the continued level of trust or co-operation in existing inter-office relationships*
- *impairing or prejudicing the flow of information to and from the Commonwealth*

20. I have taken into account that release of the specific material relating to 47D would prejudice the competitive commercial activities of Defence by disclosing sensitive commercial information.

21. In regards to the business information contained in the documents that I have deemed conditionally exempt, I found it of particular relevance that if this material was to be released, it may prejudice the agency’s ability to obtain similar information in the future.

22. After weighing up all of the above, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the conditionally exempt material in the documents. Accordingly, I have decided that the specific material is exempt under sections 47B, 47D and/or section 47G of the FOI Act.

Further Information

23. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.



Glenva Parker
Accredited Decision Maker
Strategic Policy & Intelligence Group

29 August 2016