



FOI 366/16/17 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] CN3396775

(a) The PGPA Section 23 Commitment Approval for Contract CN3396775 and

(b) any emails/note/documents that go to the decision to contract by way of prequalified tender.

[Item 2] CN3408012, CN3410383 and CN3408026

(a) The PGPA Section 23 Commitment Approval for Contract CN3408012, CN3410383 and CN3408026.

(b) emails/note/correspondence/documents that go to the reasons why Defence chose to tender this submarine related work through a Department of Immigration and Border Protection services panel in preference to a Defence services panel.

(c) Any related correspondence between the Department and Defence and the Department of Immigration in the lead up to the service requests being made.

(d) The three service requests.

(e) A list of the companies to whom service requests were sent to.

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

Documents identified

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

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release one document in full;

- b. partially release eleven documents in accordance with section 22 [access to edited copies with exempt or irrelevant material 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 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; and
- d. refuse access to Item 2 serial(c) of the request under subparagraph 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

Material taken into account

7. 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. consultation with the SEA1000 Project Office

Reasons for decision

Section 24A: Requests may be refused if documents cannot be found, do not exist or have not been received

8. Section 24A(1) of the FOI Act states:
- (1) *an agency or Minister may refuse a request for access to a document if:*
 - (a) *all reasonable steps have been taken to find the document; and*
 - (b) *the agency or Minister is satisfied that the document:*
 - (i) *is in the agency's or Minister's possession but cannot be found; or*
 - (ii) *does not exist.*

9. Officers within both the SEA1000 Project Office and Materiel Procurement Branch searched electronic and hard copy files looking for correspondence matching the scope of Item 2(c) of the request. No documents could be located.

10. Based on the above, I am satisfied that no documents could be located that meet the scope of Item 2(c). In addition I am satisfied that all reasonable steps have been taken to locate the requested documents. Accordingly I have decided to refuse access under section 24A(1) of the FOI Act.

Section 47F: Personal privacy

11. Item 1 Serials 1-3 and Item 2, Serials 1-3 contain personal information of persons other than the applicant. This information includes individual's employment history, telephone numbers and their specific technical capabilities and experience.

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 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 publicly accessible sources.

15. With reference to the above, I found that this specific information is not readily available from publicly available sources, nor is the information well known. I consider that the release of the identified information would constitute an unreasonable disclosure of personal information and is therefore consider it to be exempt under s47F of the FOI Act.

Section 47G: Business

16. Where access has been denied to information 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 of ICCPM Solutions Pty. Ltd.

17. 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...*

18. I note that use of the word 'could' in this provision also requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

19. Upon examination of the documents I identified information relating to both the daily remuneration and tenure of the organisation, which are of a sensitive nature. Disclosure of this information would show potential competitors its pricing in the tender process, allowing other

businesses to potentially use this information in their own submissions and negotiations in the future.

20. 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.

Public interest considerations – sections 47F & 47G

21. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

22. In determining whether to release the document, I considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) [public interest exemptions-factors favouring access] of the FOI Act. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to public interest. Specifically I considered if disclosure of the documents would:

- a) promote the objects of the FOI Act;
- b) inform debate on a matter of public importance;
- c) promote effective oversight of public expenditure; or
- d) allow a person to access her or his personal information.

23. I found that disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

24. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request is that the release of this information could reasonably be expected to prejudice:

- a) the protection of an individual's right to privacy;
- b) an agency's ability to obtain similar information in the future;
- c) the competitive commercial activities of an agency; and
- d) harm the interests of an individual or group of individuals.

25. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. In particular, I consider the release of the personal information of third parties could reasonably be expected to result in the decline in confidence in Defence's ability to maintain the privacy of its members. I consider that the public interest is better served in this case by maintaining the personal privacy of the third parties named.

26. As outlined in paragraph 24 above, releasing business information is likely to harm ICCPM's commercial interests. If Defence was to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future. Further, I do not believe that the removal of the identified business information significantly detracts from the value of the document being sought by the applicant.

27. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47F and 47G of the FOI Act.

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Mr Owen Spoor
Accredited Decision Maker
Capability and Sustainment Group