



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

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Our reference: FOI 410/13/14

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your email, dated 4 June 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...a copy of a Statutory Declaration purported to have been signed and witnessed by me supporting a payment claim in January 2014 on behalf of Amalgamated Pest Control Pty Ltd to Defence Department contractor John Holland Joss. The document can be identified as it relates to “DLTP: Moorebank NSW Payment Claim No 6 Amalgamated Pest Control Pty Ltd January 2014.”

2. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

3. Mr Anthony Atkinson, Director Defence Support & Reform Group Corporate Information Governance, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. Mr Atkinson identified one document as relevant to this request. The identified document is a *Statutory Declaration related to “DLTP: Moorebank NSW Payment Claim No 6 Amalgamated Pest Control Pty Ltd January 2014”*.

Decision

5. Following examination of the document Mr Atkinson decided to partially release the document 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 exempt under section 47G [public interest conditional exemptions – business] of the FOI Act.

6. The document in the form approved for release is at Enclosure 1.

Material taken into account

7. In making his decision, Mr Atkinson had regard to:
- a. the terms of the FOI request;
 - b. the content of the document in issue;
 - c. relevant provisions in the FOI Act,
 - d. Defence guidance material on the FOI Act and the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines), and
 - e. advice provided by the area whose duties relate to the requested documents.

Reasons for Decision

Section 47G Public Interest conditional exemptions – Business

8. Section 47G conditionally exempts a document if its disclosure under the FOI 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.
9. Subsection 47G(1)(b) allows for conditional exemption if disclosure could reasonably be expected to prejudice the future supply of information to the Commonwealth.
10. Against this criteria, Mr Atkinson found that the disclosure of the redacted information would disclose confidential and sensitive business information that would prejudice the future supply of information to the Commonwealth. If the information is disclosed, this could lead to the Government not being able to provide best value for future services as businesses may not compete for contracts if there is a risk of disclosure of confidential and sensitive business information.
11. Mr Atkinson considered that the disclosure of this information could allow a competitor or another person to determine the level of risk that the contractor is prepared to accept in providing services, and may be used against their commercial interests in other negotiations. Further, Mr Atkinson considered that whilst the contractor may be prepared to document this risk with the Commonwealth it may not wish for this information to be made publicly available. As such, the inappropriate release of business affairs information 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 Atkinson 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

12. In assessing whether disclosure of the business information is, on balance, contrary to the public interest, Mr Atkinson considered the 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. Mr Atkinson acknowledged that while information held by the Government is a national resource, the disclosure of the third party's business information would not increase public participation in Government processes, nor would it increase scrutiny or discussion of Government activities.

13. Mr Atkinson acknowledged that the business information may be of interest to you, however Mr Atkinson formed the view that the material would not inform public debate on any matter of public importance in any meaningful way.

14. Additionally, disclosure of the third party business information would not promote oversight of public expenditure, nor would it allow you to have further access to your own personal information.

15. Mr Atkinson considered the position of the business, and formed the view that disclosure of their business information would directly impact on the extent, timing and profitability of the contractor, and further; it would also affect their ability to maintain a competitive advantage over their competitors. Mr Atkinson 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.

16. In coming to the above decision, Mr Atkinson considered subsection 11B(4) [public interest exemptions - irrelevant factors] of the FOI Act.

17. Accordingly, Mr Atkinson considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, Mr Atkinson decided that it would be contrary to the public interest to release the information considered exempt under subsection 47G of the FOI Act.

Rights of review

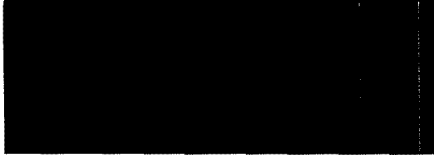
18. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 2.

Further information

19. The FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2011C00803>.

20. 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



Phillip Connelly
Case Officer
Freedom of Information

30 June 2014

Enclosures:

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