



Reference: AB36173162

FOI 494/17/18 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:

"documents sent between ASC and Defence that relate to the Mid Year Economic and Fiscal Outlook (MYEFO) 2017 -18 statement "The Government will provide up to \$29.4 million over three years from 2017-18 to support initiatives to retain and develop critical naval shipbuilding skills in the ASC Pty Ltd workforce."

excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of the request. Duplicates of documents and documents sent to and from me are also excluded. Furthermore, only final versions of documents are required."

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 four documents with three attachments, totalling 31 pages 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 Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. fully release three documents;
- b. partially release four 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 47G(1) [public interest conditional exemptions-business] or the FOI Act; and
- c. remove irrelevant materiel as referred to within the scope of the request in accordance with section 22 (1)(b)(ii) 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);
- e. advice provided by Ships Domain and Submarine Domain within Capability, Acquisition and Sustainment Group (CASG); and
- f. advice provided by ASC Pty Ltd.

Reasons for decision

Section 47G – Business affairs

8. Where access has been denied to information under section 47G of the FOI Act, I considered that the material could reasonably be expected to unreasonably affect that organisation or undertaking in respect of its lawful business, commercial or financial affair and prejudice the future supply of information to the Commonwealth.

9. Section 47G(1) of the FOI Act states:

(1) 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; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

10. Upon examination of the documents I identified information which could contribute to commercial decision making processes, specifically current and future workforce plans, plans for future redundancies, operating costs of the business and allocation of workforce to business units. I consider that disclosure of this information could reasonably be expected to adversely affect business decisions and employee relations and could prejudice frank and open future supply of information to the Commonwealth.

11. The Guidelines at paragraph 6.184 state that *“The operation of the business exemption depends on the effect of disclosure rather than the precise nature of the information itself.”* In the context of the documents identified, release of the information identified would be unreasonable due to the business decisions in play in the company at the present time.

12. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G(1) of the FOI Act.

Sections 47G - Public interest considerations

13. 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.

14. 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; or
- c) promote effective oversight of public expenditure.

15. I found that disclosure of this information may increase public participation in the Defence process (section 3(2)(a) of the FOI Act), and increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act). However, release of this information would have significant commercial ramifications and inhibit Defence's ability to conduct its normal operations.

16. 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 competitive commercial activities of an agency;
- b) an agency's ability to obtain confidential information; and
- c) an agency's ability to obtain similar information in the future.

17. On balance, I consider the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. In paragraph 6.189 the Guidelines state that "*The AAT has said, for example, that there is a strong public interest in knowing whether public money was accounted for at the appropriate time and in the manner required; and in ensuring that public programmes are properly administered.*" I have found that at this time, release of the information identified would inhibit the proper administration of public monies by foreshadowing commercial plans and underpinning employee and contractual negotiations.

18. 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 section 47G of the FOI Act.

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

Further Information

20. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release, the marker has been struck through.



Glenva Parker
 Accredited Decision Maker
 Capability and Acquisition Sustainment Group
 1 August 2018