



**Australian Government**

**Department of Defence**

Defence Support and Reform Group

Director Freedom of Information  
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Our reference: FOI 067/12/13

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your emailed letter dated 10 August 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"application for approval of the Major Development Plan for Avalon Airport (MDP) which was submitted to the Department of Defence on 25 February 2008, with additional information provided on 12 March 2008 (Application)".*

*Specifically you requested the following items:*

*ITEM 1 - all correspondence between Sinclair Knight Merz and the Department which assesses, reviews, responds to or refers to the Application;*

*ITEM 2 - all correspondence between the Department of Infrastructure and Transport and the Department;*

*ITEM 3 - all correspondence between Australian Customs and Border Protection Service and the Department;*

*ITEM 4 - all internal correspondence of the Department, including officer reports, recommendations, and file notes;*

*ITEM 5 - all correspondence between the Australian Federal Police and the Department;*

*ITEM 6 - all correspondence between the Australian Quarantine Inspection Service and the Department;*

*ITEM 7 - all correspondence between the Office of Transport Security and the Department;*

*ITEM 8 - all objections received by the Department in response to the Application, including any objection received by Melbourne Airport or Australia Pacific Airports Melbourne Pty Ltd; and*

*ITEM 9 - all correspondence between the Department and Mr Richard Marles MP, or any other Victorian or Australian parliamentarian.*

## Background

2. By telephone and email dated 13 August 2012, we advised you that your request in its original form was not considered valid under section 15(2)(b) of the FOI Act as you did not provide sufficient information concerning the documents as is reasonably necessary to enable a responsible officer of the agency to identify them.
3. By email dated 16 August 2012, you provided further information which narrowed the scope of your request to relevant documents raised during the period 25 February 2008 to 19 May 2008.
4. By email dated 21 August 2012, we advised you that your revised request still remained too broad to be processed and would therefore attract a practical refusal under section 24AA of the FOI Act. Our email also provided you with the terms of suitable request for your consideration.
5. By return email dated 21 August 2012, you confirmed your agreement to refine the scope of your request to seeking access, under the FOI Act, to:

*"Documents dated between 25 February 2008 and 19 May 2008 contained on corporate files held by the Defence Infrastructure Division, including the Property Services Branch relating to the "application for approval of the Major Development Plan for Avalon Airport (MDP) which was submitted to the Department of Defence on 25 February 2008, with additional information provided on 12 March 2008 (Application)".*

*I require only final copies of documentation, and confirm that we do not require duplicate copies of correspondence or draft documentation*

*Specifically you requested:*

*ITEM 1 - correspondence between Sinclair Knight Merz and the Department which assesses, reviews, responds to or refers to the Application;*

*ITEM 2 - correspondence between the Department of Infrastructure and Transport and the Department;*

*ITEM 3 - correspondence between Australian Customs and Border Protection Service and the Department;*

*ITEM 4 - correspondence between the Australian Federal Police and the Department;*

*ITEM 5 - correspondence between the Australian Quarantine Inspection Service and the Department;*

*ITEM 6 - correspondence between the Office of Transport Security and the Department;*

*ITEM 7 - objections received by the Department in response to the Application, including any objection received by Melbourne Airport or Australia Pacific Airports Melbourne Pty Ltd; and*

*ITEM 8 - correspondence between the Department and Mr Richard Marles MP, or any other Victorian or Australian parliamentarian.*

**Decision making authority**

6. Mr Rodney Dudfield, Director Freedom of Information, is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Documents identified**

7. Mr Dudfield has identified the following documents as matching the description of your request:

- a. Correspondence between the Department and Sinclair Knight Merz [Item 1];
- b. Avalon Airport Major Development Plan International Terminal dated February 2008 [Item 2,5 and 8];
- c. Avalon Airport Major Development Plan Review dated 5 May 2008 [Item 2,3,4 and 5];
- d. Correspondence between the Department, and;
  - i. Department of Infrastructure and Transport [Item 2];
  - ii. Australian Customs [Item 3];
  - iii. Department of Environment; and
  - iv. Department of Immigration and Citizenship;and
- e. Letter from The Hon Anthony Albanese MP to The Hon Joel Fitzgibbon MP [Item 8].

8. The details of the documents are listed in the Schedule of Documents at Enclosure 1.

**Decision**

9. Following examination of the documents and third party consultations, Mr Dudfield decided to:

- a. release one documents in its entirety; and
- b. release four serials 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 considered exempt, either under 47F [Public interest conditional exemptions—personal privacy] of the FOI Act; or section 47G [Public interest conditional exemptions – business] of the FOI Act.
- c. refuse access to Item 6 and 7 under section 24A [document cannot be found or do not exist] of the FOI Act.

10. Documents in the form approved for release are at Enclosure 2.

**Material taken into account**

11. In making his decision, Mr Dudfield had regard to:
- a. the content of the documents in issue;
  - b. relevant provisions of the FOI Act;
  - c. the guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the guidelines);
  - d. comments provided by third parties as a result of consultation; and
  - e. Subject Matter Experts (SME).

**Section 24A of the FOI Act**

12. Section 24A(1) of the FOI Act states:

24A(1) Requests may be refused if documents cannot be found, do not exist or have not been received

*Document lost or non-existent*

- (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.

13. Paragraph 8.41 of the guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1);

*8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known that it no longer exists. The statement should describe the steps the agency took to search for it.*

14. In the case of items 6 and 7, Mr Dudfield has advised that searches were conducted of Objective (Documents and Records Management System). All documents that previously existed on 'G' & 'H' drives have been transferred to Objective. Additional searches were undertaken of the hardcopy and DRMS documents currently in respective areas possession, the respective area does not possess any documents that match these Items.

15. Despite thorough and diligent searches being conducted, no documents matching the description of Item 6 and 7 could be located. Accordingly, Mr Dudfield was satisfied that all reasonable steps have been taken to find the documents requested by you, and that no documents could be found. Therefore, he decided to deny access to the documents that may have matched item 1 under section 24A of the FOI Act.

### **Section 47F – Personal Privacy**

16. Upon examination of the documents, Mr Dudfield identified information, specifically, names, signatures, mobile phone numbers and personal email addresses belonging to people other than the applicant. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Mr Dudfield 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.

17. Against those criteria, Mr Dudfield found that:

- a. the specific personal information is not well known to the general community;
- b. the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- c. the specific information is not readily available from publicly accessible sources.

18. Noting the findings against the above criteria, Mr Dudfield decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than the applicant. Accordingly, Mr Dudfield considered this material to be conditionally exempt under section 47F of the FOI Act.

19. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

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

20. Mr Dudfield noted that conditionally exempt documents carry a public interest test. Mr Dudfield has considered section 11B of the FOI Act which sets out factors favouring access and irrelevant factors when considering the public interest test.

21. Subsection 11B(3) states *factors favouring access to the document in the public interest include whether access to the document would do any of the following:*

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

22. Mr Dudfield considered that the public interest in promoting the objects of the Act have been satisfied as, in Mr Dudfield's opinion, merely removing signatures, mobile phone numbers and personal email addresses from the documents does not detract from public disclosure of government-held information. Mr Dudfield acknowledged there is a public interest in Avalon Airport development generally, but removal of signatures, mobile phone numbers and personal email addresses does not detract from informing debate on the matter.

23. Mr Dudfield do not consider that the final 2 considerations are relevant in this instance as the documents do not deal with public expenditure or contain the applicants own personal information.

24. Taking all of the above into consideration, on balance, Mr Dudfield considered that disclosure of the names, signatures, mobile phone numbers and personal email addresses would be contrary to the public interest.

25. In coming to the above decision, Mr Dudfield 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 Mr Dudfield took into account were listed under subsection 11B(4) of the FOI Act.

26. Accordingly, Mr Dudfield considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of this request. Therefore, Mr Dudfield decided that it would be contrary to the public interest to release the information considered exempt under section 47F of the FOI Act.

#### **Section 47G – business**

27. Mr Dudfield found that the identified documents contained business affairs regarding a third party, namely Sinclair Knight Merz (SKM). The information Mr Dudfield identified includes material provided to Defence regarding pricing schedules. Mr Dudfield consider that the information, if released, would adversely affect SKM in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

28. In coming to his decision, Mr Dudfield had regard to the comments provided by the third party in response to formal consultation under the FOI Act.

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

29. Subsection 11A(5) of the FOI Act provides that conditionally exempt matter must be released, unless, in the circumstances, access to that document would, on balance, be contrary to the public interest.

30. In considering subsection 11B(3) of the FOI Act, Mr Dudfield again noted that disclosure of the identified documents may promote the objects of the FOI Act, by granting access to government held information. Mr Dudfield did not consider that disclosure of the specific conditionally exempt material would inform debate on a matter of public importance, nor promote effective oversight of public expenditure.

31. Mr Dudfield considered the position of the third party who advised that disclosure of their business information would directly impact on the extent, timing and profitability of SKM's activities, further; it would also affect their ability to maintain a competitive

advantage over their competitors. Mr Dudfield considered that it is in the public interest that Defence does not disclose sensitive proprietary information of other companies or organisations.

32. Accordingly, Mr Dudfield considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of the request. Therefore, Mr Dudfield decided that it would, be contrary to the public interest to release the information considered to be exempt, under paragraph 47G of the FOI Act.

#### **Section 22**

33. Notwithstanding all of the above, Mr Dudfield found that the documents could be disclosed with the exempt material removed.

34. The FOI Act can be found at <http://www.comlaw.gov.au/Details/C2012C00231>.

#### **Payment of FOI charges**

35. In our letter dated 24 August 2012, the Department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay the charges for the administration of your request and paid the preliminary deposit of [REDACTED] on 25 September 2012.

36. At the completion of your request, the actual amount for processing was calculated to be [REDACTED]. Therefore, the remaining balance is the difference between the assessment of charges [REDACTED] and the deposit you have already paid [REDACTED].

37. Accordingly, you are required to pay [REDACTED] in order to finalise your request. Please complete and return the form at Enclosure 2 to the FOI Directorate, this form is an agreement to pay outstanding charges. Upon receipt of the form an invoice will be generated, noting this can take up to 3 business days. Details about payment of the invoice are on the form.

38. Once the outstanding charges have been finalised, we will provide you with a copy of the documents in the form approved for release.

#### **FOI Disclosure Log**

39. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within two working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

#### **Rights of review**

40. The FOI Act provides for rights of review of decisions. A copy of fact sheet "Freedom of Information – Your Review Rights" setting out your rights of review is at Enclosure 3.

**Further advice**

41. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Andrea Sansom  
Assistant Director  
Freedom of Information

13 Nov 2012

**Enclosures:**

1. Schedule of documents
2. Freedom of Information Payment Agreement form
3. Fact Sheet: Freedom of Information – Your Review Rights



Serial	Matching Items	Pages	Description	Decision under FOI Act	Reasons
1	1	22	Correspondence between the Department and Sinclair Knight Merz	Partial Release	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt, under section 47F [Personal Privacy conditional exemption] or section 47G [Business] of the FOI Act
2	2,5 and 8		Avalon Airport Major Development Plan – International Terminal - 2 February 2008	Partial Release	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt, under section 47F [Personal Privacy conditional exemption] of the FOI Act
3	2,3,4 and 5		Avalon Airport Major Development Plan Review - 5 May 2008	Partial Release	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt, under section 47F [Personal Privacy conditional exemption] of the FOI Act
4	2, 3 and intent of the scope		Correspondence between the Department and: <ul style="list-style-type: none"> <li>- Department of Infrastructure and Transport</li> <li>- Australian Customs</li> <li>- Department of Environment</li> <li>- Department of Immigration and Citizenship</li> </ul>	Partial Release	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt, under section 47F [Personal Privacy conditional exemption] of the FOI Act
5	8		Correspondence between The Hon Anthony Albanese MP to The Hon Joel Fitzgibbon MP	Full release	