Dear [Redacted]

1. I refer to your email, dated 11 October 2011, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to documents regarding the export of surplus Victoria Police and South Australia Police firearms.

Specifically, you requested:

"...only the initial letters of application from the police departments and the final correspondence from DECO regarding the matter."

FOI Statutory deadline

2. In an email, dated 15 November 2011, you were advised of the requirement to consult a third party in accordance with section 27 of the FOI Act. You were also advised that subsection 16(6) of the FOI provides for an extension of 30 days to the statutory time limit for processing requests, therefore extending the deadline for a response to your request to 15 December 2011.

3. In an email, dated 15 December 2011, I sought your agreement to extend the FOI statutory deadline, in accordance with section 15AA of the FOI Act, to 15 January 2012. By return email on the same date, you agreed to the requested extension.

4. As required by section 15AA of the FOI Act, the OAIC was notified of the extension, by email, on 19 December 2011.

5. The FOI Directorate is pleased to provide this decision ahead of the extended FOI statutory deadline.

Defending Australia and its National Interests
FOI decision maker

6. Mr Daniel Golding, Acting Director, Defence Export Control Office (DECO) is the authorised decision maker, under the FOI Act, in relation to your request.

Identified documents

7. Mr Golding identified six documents, being application packs as filed by DECO containing applications, correspondence and export permissions between an external organisation and DECO.

Decision

8. Mr Golding decided to release the identified documents with deletions, in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, as the deleted material is considered exempt under sections 47F [public interest conditional exemptions – personal privacy] and 47G [public interest conditional exemptions – business] of the FOI Act.

Material taken into account

9. In making his decision, Mr Golding had regard to:

   • the content of the documents in issue;
   • relevant provisions in the FOI Act;
   • the guidelines published by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act; and
   • the submission of the third party following the formal consultation process.

Section 47F – personal privacy

10. Mr Golding found that the documents contained the names, direct contact details and personal signatures of personnel employed by Grycol International Pty Limited, Smith & Wesson and Defence.

11. In accordance with subsection 47F(2) of the FOI Act, in determining whether disclosure of this information would involve the unreasonable disclosure of personal information, Mr Golding had regard to:

   a. the extent to which the information is well known;
   b. whether the people to whom the information relates are 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.
12. Against those criteria, Mr Golding found that:

a. the name, direct contact details and personal signatures contained in the documents are not well known;

b. he is not aware of any information which confirms that the people concerned are involved in the matter dealt with in the documents; and

c. the specific information is not readily available from publicly accessible sources, including the websites of the organisations.

13. Mr Golding considered that the information satisfied the criteria for conditional exemption under section 47F of the FOI Act as the disclosure of such information would be considered unreasonable.

Section 47F – public interest considerations

14. Section 47F of the FOI Act states that access to a conditionally exempt document must generally be given unless its disclosure would be contrary to the public interest as set out in section 11B of the FOI Act.

15. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, Mr Golding had regard to the range of factors that favour access to a document as set out in subsection 11B(3) of the FOI Act. Mr Golding notes that disclosure of the documents may promote the objects of the FOI Act, as information held by the Government is a national resource. However, he does not consider that disclosure of this specific information would increase public participation in Government processes.

16. Mr Golding noted that the release of this material may be of interest to you, however, it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the specific information would not promote oversight of public expenditure. Finally, Mr Golding took into account the comments of the third party who advised that, due to the nature of the business, it would be considered a safety/security risk to release this type of personal information.

17. In coming to his decision, Mr Golding advised that he also had regard to subsection 11B(4) of the FOI Act.

18. Mr Golding considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document.
Section 47G - business

19. Mr Golding found that the identified documents contained information regarding an organisation contracted by the South Australian and Victorian Police departments, namely Grycol International Pty Limited. The information Mr Golding identified includes estimated values assigned to the weapons, expected dates of export and serial numbers of weapons. Mr Golding considered that the information, if released, would adversely affect Grycol International Pty Limited in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

20. In coming to his decision Mr Golding advised that he had regard to the comprehensive comments provided by the third party in response to formal consultation under the FOI Act.

Section 47G – public interest considerations

21. Subsection 11A(3) 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.

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

23. Mr Golding considered the position of the third party who advised that disclosure of their business information could enable another organisation to gain a competitive advantage and could prejudice the organisation's position in the marketplace. Mr Golding considered that the release of the information is not in the public interest as the information is incidental to the context of the documents. Further, Mr Golding considered that it is in the public interest that Defence does not disclose proprietary information of companies who have been awarded State or Federal government contracts.

24. On balance, Mr Golding concluded that disclosure of the conditionally exempt material would be contrary to the public interest.

25. Copies of the relevant sections of the FOI Act are at Enclosure 1.

Payment of Charges

26. In our letter, dated 18 October 2011, the department estimated the cost associated with processing your request to be ____. You agreed to pay charges for the administration of your request and paid the preliminary assessment deposit of ____ on 24 October 2011.
27. Upon completion of your request, the actual amount for processing was calculated to be [redacted]. However, as explained in our above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the identified documents intact. The remaining balance is the difference between actual charges [redacted] and the deposit you have already paid [redacted].

28. Accordingly you are required to pay [redacted] in order to finalise your request. Cheques or Money Orders should be made out to the ‘Receiver of Public Monies’ and forwarded to the address at the top of this letter. Credit card payments can be made by completing the form at Enclosure 2 and returning it to the FOI Directorate. Upon receipt of the payment the documents in the form approved for release will be dispatched by email, to [redacted] unless advised otherwise.

Rights of review


FOI Disclosure Log

30. 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.

Further advice

31. Should you have any questions in regard to this matter please contact me directly on (07) 3332 6359. Alternatively, the FOI team can be contacted on the details at the top of this letter.

Yours sincerely

Theresa Stinson
Assistant Director – Media Case Management
Freedom of Information

13 January 2012

Enclosures:
1. Relevant sections of the FOI Act
2. Credit card form