By email: [redacted]

Dear [redacted],

1. I refer to your email of 8 November 2011, in which you requested access, under the Freedom of Information Act 1982 (FOI Act), to:

   "...all documents contained in the following Department of Defence file:
   2011/1063947
   AGL Energy - Coal Seam Gas Exploration - Singleton and Holsworthy."

2. Defence is pleased to provide the following decision prior to the expiration of the extended statutory deadline as detailed in paragraphs 33 and 34.

FOI decision maker

3. Mr Rod Dudfield, Director, Freedom of Information is the accredited decision maker, under the FOI Act, in relation to your request.

Documents identified

4. Mr Dudfield identified 27 documents which matched the scope of your request. A schedule of the identified documents is at Enclosure 1.
Decision

5. Mr Dudfield decides to release the identified document with material deleted, 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 section 33 [documents affecting national security, defence or international relations], section 47F [public interest conditional exemptions – personal privacy] and section 47G [public interest conditional exemptions – business] of the FOI Act.

Material taken into account

6. In coming to his decision, Mr Dudfield 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 under section 93A of the FOI Act (the guidelines)
- Advice from Defence staff whose duties relate more closely to the matters referred to in the documents
- the Department of Finance and Deregulations response to courtesy consultation
- third party’s response to formal consultation.

Reasons for decision

Section 33

7. Mr Dudfield found that the documents contained responses prepared by Defence to Risk Assessments. In particular, he found that the risk assessment ratings and comments provided by Defence personnel in response to the Security section of the documents could reasonably be expected to cause harm to the security of the Commonwealth and in particular Defence.

8. Mr Dudfield found that the disclosure of the above mentioned material could expose the methodology Defence applies to assessing risks in relation to allowing access to Defence property and establishments. He also considered that the disclosure of this information would be a dangerous tool in the hands of an adversary as they could utilise the information to circumvent Defence processes to gain access to Defence holdings, establishments and land more generally. He noted that this assessment has more recently been reinforced following the widely publicised attempts by unauthorised persons to gain access to Holsworthy Barracks in Sydney.

9. Accordingly, Mr Dudfield decided that the material identified above is exempt, pursuant to section 33(a)(i) of the FOI Act.
Section 47F – personal privacy

10. Mr Dufield found that the identified documents contained the mobile telephone numbers of Defence staff. He considered that this information satisfies subsection 47F(1) of the FOI Act as disclosure of the information would be considered unreasonable.

11. Subsection 47F(2) requires that Mr Dufield consider the following:

- the extent to which the information is well known;
- whether the person to whom the information relates if known to be (or have been) associated with the matters dealt with in the documents;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency or Minister considers relevant.

12. Mr Dufield is satisfied that the mobile telephone numbers of Defence staff is not well known. Further, the owners of the mobile telephone numbers are not known to be associated with the issue to which the documents refer. Mr Dufield confirmed that Defence would not publish mobile telephone numbers of the staff involved without their express permission, as such he stated he was confident that the mobile telephone numbers at issue have not been published by Defence previously.

13. Based on the above, Mr Dufield is convinced that the mobile telephone numbers are conditionally exempt under section 47F of the FOI Act.

Public interest considerations

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

15. 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
d) allow a person to access his or her own personal information.

16. Mr Dufield considered that the public interest in promoting the objects of the Act have been satisfied as, in his opinion, merely removing mobile telephone numbers from documents does not detract from public disclosure of government-held information. He acknowledged there is a public interest in Coal Seam Gas mining generally, but removal of the mobile telephone numbers does not detract from informing debate on the matter.

17. Mr Dufield did not consider that the final 2 considerations were relevant in this instance as the documents do not deal with public expenditure or contain your own personal information.
18. Mr Dutfield had regard to subsection 11B(4) of the FOI Act which sets out irrelevant factors which must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest.

19. Taking all of the above into consideration, on balance, Mr Dutfield considered that disclosure of the mobile telephone numbers would be contrary to the public interest.

Section 47G – business

20. Mr Dutfield found that the identified documents contained business information regarding a third party, namely AGL Energy. The information Mr Dutfield identified includes material provided to Defence about proposed Coal Seam Gas mining on Defence land. The material contains AGL Energy’s proposed program or plan in regards to said mining. Mr Dutfield considered that the information, if released, would adversely affect AGL Energy in respect of their lawful business and commercial affairs and is therefore considered conditionally exempt under section 47G of the FOI Act.

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

Public interest considerations

22. 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.

23. In considering subsection 11B(3) of the FOI Act, Mr Dutfield again noted that disclosure of the identified documents may promote the objects of the FOI Act, by granting access to government held information. He 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.

24. Mr Dutfield 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 AGL Energy’s activities, further, it would also affect their ability to maintain a competitive advantage over their competitors. Mr Dutfield considered that it is in the public interest that Defence does not disclose sensitive proprietary information of other companies or organisations.

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

Section 22

26. Notwithstanding all of the above, Mr Dutfield found that the documents could be disclosed with the exempt material removed.
Payment of Charges

28. In our letter dated 10 November 2011, the department estimated the cost associated with processing your request to be [REDACTED]. By email, dated 10 November 2011 you sought waiver of the charges on public interest grounds.

29. By letter dated 12 December 2011, you were advised of Ms Davidson’s decision to impose the charges, at the reduced amount of [REDACTED]. On 4 January 2012, you agreed to pay revised charges for the administration of your request and paid the preliminary assessment deposit of [REDACTED].

30. Upon completion of your request, the actual amount for processing exceeded the revised preliminary assessment of charges. However, as explained in paragraph 9 of our letter, dated 10 December 2011, the amount payable can only be more than the preliminary assessment if the decision is to release all of the requested documents intact.

31. Accordingly you are required to pay [REDACTED] in order to finalise your request. Please complete the form at Enclosure 2 and return it to the FOI Directorate. Upon receipt of your form Defence will generate an invoice for you to make payment. The FOI Directorate will arrange for dispatch of the documents upon receipt of the form.

32. Please note that the documents in the form for release exceed 20MB and as such cannot be sent by email. I propose to save the documents onto disc and send to you by registered post, if you would prefer to receive the documents in hard copy please advise so the charges can be amended to reflect the photocopying costs.

Statutory deadline

33. On 17 January 2012, our office advised you that the decision maker had determined that there was a requirement to consult with a third party in accordance with section 27 [consultation—business documents] of the FOI Act before making a decision on the release of the identified documents. In accordance with section 15(6) [extension of processing period to comply with requirements of section 26A, 27 or 27A] of the FOI Act, the statutory deadline was extended to 2 March 2012.

34. On 21 February 2012, I sought your agreement, in accordance with section 15AA of the FOI Act, to extend the statutory deadline by 7 days to 9 March 2012. By email, dated 27 February 2012, you kindly agreed to the requested extension.

Rights of review

FOI Disclosure Log

36. 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

37. 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

9 March 2012

Enclosures:
1. Schedule of documents
2. Freedom of Information Request – Payment Authorisation