



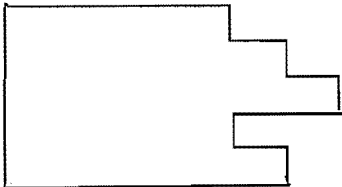
**Australian Government**

**Department of Defence**

Defence Support and Reform Group

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Our reference: FOI 143/12/13



Via email:

Dear

1. I refer to your email of 11 October 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to documents recording the Commonwealth's decision regarding the Sydney Intermodal Terminal Alliance.
2. On 12 October 2012, Mr Rod Dudfield informed you that unfortunately, your request in its current form is considered too broad to be processed and would therefore attract a practical refusal under section 24 of the FOI Act.
3. In accordance with section 16 of the FOI Act [Transfer of requests], and as forewarned in earlier correspondence, I now confirm as required by subsection 16(4) of the FOI Act that the Department of Defence has obtained agreement from the Department of Finance and Deregulation (DoFD) and the Department of Infrastructure and Transport (DoIT) to transfer the following Items relating to your request to those respective agencies as follows:

**Transferred to Department of Finance and Deregulation (DoFD)**

**ITEM 1**

- (d) proceed with the Moorebank Intermodal Terminal Project (MIT Project) on 23 April 2012;

**ITEM 2**

- (b) minutes of meetings of the Moorebank Project Office (MPO);
- (c) minutes of meetings of the MIT Project Steering Committee; and

**ITEM 4**

- (b) minutes of meetings of the Moorebank Project Office (MPO);
- (c) minutes of meetings of the MIT Project steering Committee;  
concerning the preparation of:
  - (i) the letter from Mr Robin Renwick of the MPO to Stockland dated 12 July 2011;
  - (ii) the letter from the MPO to Stockland dated 12 October 2011;
  - (iii) the letter from the MPO to Stockland dated 20 December 2011;
  - (iv) the letter from the MPO to Qube dated 14 September 2012;

- (v) the letter from Ms Jan Mason of the MIT Project Steering Committee to Qube dated 24 September 2012;  
full (ie unredacted) versions of:

**ITEM 5**

- (a) Greenhill Caliburn Peer Review Phase 1 Report;  
(b) Greenhill Caliburn Peer Review Phase 2 Report;  
(c) KPMG draft Detailed Business Case dated 6 February 2012 (as referred to in Greenhill Caliburn Peer Review Phase 1 and 2 Reports);  
(d) KPMG Final scoping Study dated February 2001 (as referred to in Greenhill Caliburn Peer Review Phase 1 and 2 Reports); and

**Transferred to Department of Infrastructure and Transport (DoIT)**

**ITEM 5**

- (e) Infrastructure Australia's Report on the Moorebank Precinct dated 2009

4. Following discussions and section 16 transfers, the following revised scope was agreed on 25 October 2012. Under the *Freedom of Information Act 1982* (FOI Act):

**ITEM 1**

Documents recording the Commonwealth's decision to:

- (a) withhold or refuse to grant land owner's consent to the Sydney Intermodal Terminal Alliance (SIMTA) concept plan, application reference MP 10\_0.93 (SIMTA Concept Plan);  
(b) withhold or refuse to grant land owner's consent to SIMTA's proposed rail connection across the southern portion of Lot 3001 in DP1125930;  
(c) lodge with the NSW Department of Planning and Infrastructure (DoPI) an objection to the SIMTA Concept Plan; and

**ITEM 2**

- (a) minutes of meetings of the DOD, its officers, employees and/or agents;  
(b) correspondence between the DOD and the Department Finance and Deregulation, Department of Infrastructure and Transport, Department of Environment, Water, Sustainability, Population and Communities (SEWPaC) or the DoPI;

which record deliberations in relation to the Commonwealth's decision at Item 1(a) - (c) above.

**ITEM 3** – Recommendations, studies or reports prepared or received by the DOD, its officers, employees and/or agents, relied on by the Commonwealth for the purpose of making the decisions listed)in relation to the Commonwealth's decisions listed at:

- (a) Item 1(a) - (c) above, and  
(b) the Commonwealth decision to proceed with the Moorebank Intermodal Terminal Project (MIT Project) on 23 April 2012.

**ITEM 4**

- (a) minutes of meetings of the DOD;  
(b) correspondence between the DOD and the Department Finance and Deregulation, Department of Infrastructure and Transport, SEWPaC, or DoPI;

- (c) correspondence between the DOD and the MPO or the MIT Project Steering Committee concerning the preparation of:
- (i) the letter from Mr Robin Renwick of the MPO to Stockland dated 12 July 2011;
  - (ii) the letter from the MPO to Stockland dated 12 October 2011;
  - (iii) the letter from the MPO to Stockland dated 20 December 2011;
  - (iv) the letter from the MPO to Qube dated 14 September 2012;
  - (v) the letter from Ms Jan Mason of the MIT Project Steering Committee to Qube dated 24 September 2012;

In making the application we do not seek any documents that relate exclusively to:

- (a) the Moorebank Unit Relocation Proposal or Project; or
- (b) the Defence Logistic Transformation Program.

Further we confirm that we do not seek documents that are:

- (a) not the final version of the document;
- (b) duplicate copies of documents (including copies of emails sent to multiple recipients); or
- (c) covering emails which only attach material and do not contain any substantive information;

### **Background**

5. 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**

6. Mrs Sarah Brown, Director Environmental Remediation Programs, Defence Support & Reform Group is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

### **Documents identified**

7. A total of six documents incorporating 20 pages were identified as relevant to this request. The details of the documents are listed in the schedule of documents at Enclosure 1.

### **Decision**

8. Following examination of the documents, Mrs Brown decided to release six documents 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 conditionally exempt under sections 47C [Public interest conditional exemptions – Deliberative processes] and 47F [Public interest conditional exemptions – personal privacy] and of the FOI Act, or considered section 22, irrelevant to the scope of the request.

9. Mrs Brown's decision, under the FOI Act, in respect to each document is recorded in the schedule of documents at Enclosure 1.

10. A copy of the documents in the form approved for release is at Enclosure 2.

**Reasons for decision****Material taken into account**

11. In making her decision, Mrs Brown had regard to:
- a. the parameters of the request;
  - b. the content of the documents in issue;
  - c. the relevant provisions in the FOI Act;
  - d. the *Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982* (the Guidelines); and
  - e. the *Principles on Open Public Section Information* issued by the Information Commissioner; and
  - f. comments provided by a third party.

**Material deleted pursuant to section 22**

12. Section 22 of the FOI Act also provides that:

*if an agency... decides that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and it is possible for the agency... to prepare a copy (an edited copy) of the document, modified by deletions... the agency ... must prepare the edited copy... and give the applicant access to the edited copy.*

13. Mrs Brown have decided to delete information from several documents that Mrs Brown identified as matching the request, pursuant to section 22 of the FOI Act, on the grounds that the deleted material is irrelevant to the request. This material appeared in email correspondence as documents where collected for the FOI request.

14. Noting the foregoing, Mrs Brown has decided to delete this irrelevant material from the documents before releasing them.

**Reasons for decision – section 47C**

15. The FOI Act includes provisions under section 47C to protect documents that are involved in the government's broader decision-making and deliberative processes. The emails, in her view, are a deliberative document, which if disclosed at this point in time would release matter relating to opinion, advice and recommendations for the purposes of the deliberative processes involving functions of Defence.

16. Under section 47C(1) of the FOI Act, a document is conditionally exempt if its disclosure would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberations that have taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister. Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest.

17. Mrs Brown consider that the emails are conditionally exempt at this time, under subsection 47C(1) of the FOI Act, as it is currently being considered by Defence. Further, as the emails are still under consideration, it does not represent the Department's, Minister's or Government's final view on either its content or possible actions on recommendations arising from it.

18. Mrs Brown believes that premature release of the emails prior to its full consideration has the potential to impact on Defence.

19. Taking into account the guidelines issued by the Australian Information Commissioner, it is noted that one consideration in the exemption under section 47C is whether the document includes content of a specific type, namely deliberative matter. It is her view that the emails contain material which can be protected under subsection 47C(1) of the FOI Act, due to its deliberative nature.

**Reasons for decision – section 47F**

20. Upon examination of the documents, Mrs Brown found that they contained the names, mobile telephone numbers and e-mail addresses belonging to people other than your client. In accordance with subsection 47F(2), in determining whether the disclosure of the names, mobile telephone numbers and e-mail addresses would involve the unreasonable disclosure of personal information, Mrs Brown had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is (or known to have been) associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

21. Against those three criteria, Mrs Brown found that:

- a. the specific pieces of personal information relating (i.e. names, mobile telephone numbers and e-mail addresses) are not well known to the general public;
- b. the persons 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. this specific information is not readily available from publicly accessible sources.

22. Noting the findings against the above criteria, Mrs Brown consider 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, Mrs Brown decided that the disclosure of the names, mobile telephone numbers and e-mail addresses belonging to third parties, would involve the unreasonable disclosure of the officials' personal information. Accordingly, Mrs Brown considered the materiel to be conditional exempt under section 47F of the FOI Act.

**Public interest considerations - section 11A(5)**

23. Section 11A(5) of the FOI Act requires Defence to allow access to an exempt documents unless, in the circumstances, access to the documents would, on balance, be contrary to the public interest.

**Public interest considerations - section 47F**

24. In assessing whether disclosure is on balance, contrary to the public interest, Mrs Brown considered the range of factors set out in section 11B(3) [Public interest exemptions – factors] of the FOI Act, which favours access to a document. Mrs Brown note that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

25. I also considered the following information provided in the Guidelines issued by the Office of the Australian Information Commissioner:

- a. *“6.138 Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a public servant’s name, work email address, position and title, contact details, decisions or opinions.”; and*
- b. *“6.139 Where public servants personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that public servant was performing their public duties. Such information may often also be publicly available, such on an agency website.”*

26. While Mrs Brown noted that release of this material may be of some interest to your client, Mrs Brown consider it would not inform public debate on any matter of public importance in any meaningful way. Additionally, disclosure of the information would not promote oversight of public expenditure.

27. Disclosure of the information would not allow your client further access to his own personal information. Furthermore, Mrs Brown consider that the protection of an individual’s right to privacy far outweighs any public interest there may be in the release of this material.

28. In coming to the above decision, Mrs Brown also considered 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 Mrs Brown took into account were listed under subsection 11B(4) of the FOI Act..

29. Accordingly, Mrs Brown 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.

30. Therefore, Mrs Brown decided that it would be contrary to the public interest to release the information considered conditionally exempt, under subsection 47F of the FOI Act.

### **Item 1 Serial 2**

31. Mrs Brown coordinated extensive searches within the originating area for the Ministerial Submission and also within Directorate of Ministerial and Parliamentary Liaison Services (DMPLS) to locate a copy of page 3 of Item 1 Serial 2. Unfortunately, this page was unable to be found.

### **Consultation with third parties - documents affecting personal privacy**

32. Following examination of the documents, Mrs Brown found that they contained the mobile telephone numbers, e-mail addresses and other personal information about individuals which satisfy the statutory definition of “personal information” under section 4 of the Act, as stated in the Commonwealth Attorney Generals Department FOI Memorandum No. 94.

33. Prior to making her final decision, Mrs Brown decided to consult with third parties under section 27A [Consultation – Documents affecting personal privacy] of the FOI Act, no objections were raised to the release of information..

34. Mrs Brown decided to release the documents with deletions, as set out in paragraph 8 above.

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

**Payment of FOI charges**

36. In our letter dated 26 October 2012, the Department estimated the cost associated with processing your request to be [ ] to which you did not respond.

37. On 28 November 2012, following review of the documents within the scope of your request, we provided a revised estimate of the cost associated with processing your request to be [ ]. You paid the charges for the administration of your request in full on 29 November 2012.

38. Upon completion of your request, the actual amount for processing exceeded the original estimate provided to you. However, as explained in the above mentioned letter the amount payable can only be more than the preliminary assessment if the decision is to release all of the documents requested in full. Accordingly, on this occasion you are not required to pay any further charges for the processing of your request.

**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.

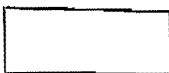
**Rights of review**

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 information**

41. 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



Andrea Sansom  
Assistant Director Freedom of Information

4 January 2013

Enclosure:

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