



Australian Government
Department of Defence

BN8821834

FOI 038/19/20 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, including memos, reports, submissions and briefings, related to all projects between the University of Technology Sydney and China Electronics Technology Group which were submitted to the department for approval under the Australian Defence Trade Controls Act 2012.”

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 29 documents as matching the description of this request.

Decision

4. I have decided to:

- a. release four (4) documents in full;
- b. partially release twenty (20) 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 47F [public interest conditional exemptions – personal privacy] and/or section 47G [public interest conditional exemptions – business] of the FOI Act;
- c. deny access to five (5) documents on the grounds the deleted material is considered exempt under section 45(1) [documents obtained on confidence] of the FOI Act; and
- d. remove material that was irrelevant to the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

5. 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 from International Policy Division, the Defence Export Control Office and Defence Legal; and
- f. advice from the University of Technology Sydney.

Reasons for decision

Section 45(1) – Documents Obtained in Confidence

6. With regard to the project applications made to the Department of Defence, I have found that although there is a public interest in favour of releasing information to demonstrate that the University of Technology Sydney has complied with its obligations under the federal *Defence Trade Controls Act 2012*, this decision to release some information does not extend to releasing the project titles or details of the research found in the contracts between the University of Technology Sydney and its research collaborators.

7. Information about projects, including project titles, technical specifications, the identities of specific researchers (which in themselves may identify the focus of research), and contracts between the University of Technology Sydney and China Electronics Technology Group, are commercial-in-confidence and hold commercial value to both the University of Technology Sydney and China Electronics Technology Group. This information is included across all documents included in this consultation.

8. The University of Technology Sydney operates in a competitive environment for research funding from industry partners. China Electronics Technology Group also operates in a competitive market for their products. Release of provisions in agreements and the type of research proposed to be undertaken would place the University and China Electronics Technology Group at a competitive disadvantage to other research and industry organisations operating in the same markets. It may also prejudice the University of Technology Sydney's ability to attract funding where commercial-in-confidence information is disclosed.

9. Further to this, revealing the nature of research undertaken as part of the University of Technology Sydney and China Electronics Technology Group research collaboration would prejudice the ability for both parties to apply for patents or commercially exploit research discoveries. Release of information about the research projects themselves will also reveal China Electronics Technology Group's strategic areas of interest and have an impact on their competitive advantage.

10. Much of the content within the contracts is also covered by the following objections under sections 47F and 47G of the FOI Act, but the release of the contracts themselves may result in an action for breach of confidence against Defence or the University of Technology Sydney. I have thus decided to deny release of the contracts in whole under section 45(1) of the FOI Act.

11. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Section 47F - Public interest conditional exemptions - Personal Privacy

12. In accordance with section 47F of the FOI Act and paragraphs 6.127-6.137 of the Guidelines "[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person". On examination of the documents, I have found that the document contains personal information (names, private email addresses and telephone numbers) of a number of persons other than the applicant. They are not relevant to the application.

13. Section 11A (5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed "unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest".

14. When assessing whether the disclosure of personal information is unreasonable, I considered the following factors:

- 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 document;
- c. the availability of the information from publicly accessible sources; and
- d. the effect the release of the personal information could reasonably have on the third party.

15. I found that the:

- a. specific personal information listed is not well known;
- b. the individuals whose personal information is contained in the documents is not widely known to be associated with the matter dealt with in the documents; and
- c. the information is not available from publicly accessible sources.

16. Taking into account the above factors, I consider that the release of the identified personal information to be an unreasonable disclosure and conditionally exempt under section 47F(1) of the FOI Act.

17. None of the factors listed in section 11B(4) of the FOI Act [Irrelevant Factors] were taken into account when making my decisions under the Public Interest or Personal Privacy conditional exemptions.

Section 47G - Public interest conditional exemptions - Business

18. Upon examination of the documents, I also identified information specifically pertaining to the business, commercial or financial affairs (business information) of a third party, that being the University of Technology Sydney. The Guidelines advise that under section 47G of the FOI Act a document is conditionally exempt if it discloses information:

“concerning the business, commercial or financial affairs of an organisation or undertaking, where the disclosure of that information:

1. *Would or could reasonably be expected to, unreasonably effect ... that organisation or undertaking in respect of its lawful business, commercial or financial affairs”*

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.

20. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the 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 note that disclosure may promote some of the objectives of the FOI Act, as information held by Government is a national resource.

21. In accordance with subsection 47G(3) of the FOI Act, in determining whether the disclosure of this information would involve the unreasonable disclosure of business information, I had regard to:

- a. the extent to which the information is well known;
- b. whether the person or organisation to whom the business information relates is known to be associated with the matters dealt with in the information;
- c. the availability of the information from publicly accessible sources; and
- d. whether the documents contain business information about Defence and the University of Technology Sydney and their research partners only or whether they contain business information about the applicant.

22. Against these four criteria, I found that:

- a. although the fact that Defence and the University of Technology Sydney have a business relationship may be known to the general public (although likely not “well known”), the specific detail of the commercial arrangements to enable this is not;
- b. the information regarding the University of Technology Sydney and their research partners is not known to the general public;
- c. the information regarding the specific business arrangements is commercial in confidence and, therefore, not readily accessible from publicly available sources; and
- d. the documents do not contain business information about the applicant.

23. Further, paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I found particularly relevant in considering disclosure of the identified material are that, if released, this information could reasonably be expected to:

- a. prejudice an agency's ability to obtain confidential information; and
- b. prejudice an agency's ability to obtain similar information in the future.

24. There is also a strong public interest in Defence maintaining the Commonwealth's security, good commercial and international relationships, and not releasing information that would harm the security of the Commonwealth. Full disclosure of the documents would have a substantial adverse effect on the proper and efficient conduct and operations of Defence and this would not, in my view, be in the public interest.

25. I note that the word "could" in this provision requires no more than a degree of reasonableness to be applied to deciding whether disclosure would cause the circumstances specified.

26. The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. I am satisfied that the effect of disclosing the identified material would have an adverse effect on the professional, commercial and financial affairs of a third party.

27. Also, it could reasonably be expected that other potential collaborators could reduce their interest in both Defence and the University of Technology Sydney if they believed that the status of their arrangements or conditions of their commercial contracts may be publicly released against their wishes.

28. Noting the above findings, I have decided that disclosure of the specific information would be an unreasonable disclosure of business information belonging to a third party and that the factors against disclosure outweigh the factors for disclosure.

29. Accordingly, I consider that the material is exempt pursuant to section 47G of the FOI Act.

30. None of the factors listed in section 11B(4) of the FOI Act [Irrelevant Factors] were taken into account when making my decisions under the Public Interest or Business conditional exemptions.

Third party consultation

31. I decided to consult with third parties regarding information which was contained in the documents. In response to this consultation, some of the third parties have objected to the release of their business/personal information. I agree with all of the objections and have incorporated them into this response.

Further Information

32. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. Your review rights are attached.

33. In accordance with the requirements of section 11C of the FOI Act, details of information released under the FOI Act are required to be published. The Department of Defence will publish identified documents relating to requests within five working days of receipt by the applicant or immediately following any publication of the released material. Defence will also publish the statement of reasons with privacy deletions.



Rachelle Warner
Accredited Decision Maker
Strategic Policy & Intelligence Group

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