



Australian Government
Department of Defence

JMPU/2020/OUT/BN21661463

FOI 098/20/21 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:

“1. The contract dated on or about 22 February 2011, including its associated Schedules, entered into by the Defence Department with Air Company Vertical-T LLC, possibly just Vertical-T LLC, for the supply of one or more rotary wing aircraft for Operation Slipper in Afghanistan.

2. The contact amendment (dated on or about 1 August 2011 which extended the period of the above contract from 31 August 2011 to an amended end date of 30 June 2012.

3. The tender documentation submitted to Defence by Mr Yuri Tchernobryvko on behalf of Vertical-T in response to Defence’s ATM ID AO/004/10-11 (Published 25.10.10), which was successful in winning the above contract.

4. A list of names of other companies that submitted tenders for the above contract. If such a list is too large, it can be limited to 5-10 of the most substantial companies that tendered.

5. The main few documents produced by and/or relied on by Defence during its due diligence process prior to selecting Vertical-T as the successful tenderer.

6. Significant items of correspondence between Defence and Vertical-T, and/or Defence and Vertical-T’s Australian agent Vertical Australia Pty Ltd, from the ATM date (25.10.10) to 31 August 2011.

The following information may be excluded, if contained in documents falling within the scope of this request: personal email addresses, signatures, PMKeys numbers, and mobile telephone numbers.”

Duplicates of documents, and documents sent to and from the applicant are excluded from this request. Defence has only considered final versions of documents.

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 68 documents as matching the description of the request.

4. The decision in relation to each document is detailed in a schedule of documents.

5. I have added an FOI reference number and document number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. release 49 documents in full;
- b. partially release 10 documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] under section 33 [Documents affecting national security, defence and international relations]; section 47F [public interest conditional exemptions-personal privacy], and section 47G [public interest conditional exemptions-business] of the FOI Act;
- c. refuse access to nine documents of the request on the grounds that they are exempt under section 47G of the FOI Act; and
- d. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

7. 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; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Reasons for decision

Section 33(a)(iii) – Documents affecting national security, defence or international relations

8. Section 33(a)(iii) of the FOI Act exempts a document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth. Paragraph 5.36 of the Guidelines describes international relations as the ability of the Australian Government to maintain good working relations with other Governments and international organisations and to protect the flow of confidential information between them, including relations between government agencies.

9. The documents within the scope of this request contain information, which if released, could reasonably be expected to damage the international relations of the Commonwealth. The documents contain details of a foreign country's standard operating procedures. If this information were to be publicly released by Defence without specific authorisation from the other nation, it would likely cause damage to the international relations of the Commonwealth insofar as it could limit the Commonwealth's ability to deal with these countries in relation to similar matters in the future. The disclosure of such information may diminish the confidence which another country has in Australia as a reliable recipient of its confidence, making that country less willing to cooperate with Australian agencies in the future.

10. Therefore, I have decided to partially exempt three documents as exempt under section 33(a)(iii) of the FOI Act.

Section 47F - Personal privacy

11. Upon examination of the documents, I identified information of individuals who are not Commonwealth Officials. Specifically, names and email addresses belonging to individuals other than the applicant. The OAIC guidelines state that consideration must be given to the following:

- 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.

12. Against these three criteria, I found that:

- a. the specific pieces of personal information relating to the individuals are not well known.
- 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.

13. Noting the above, I have decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to individuals other than the applicant and could reasonably be expected to cause harm to their privacy. Accordingly, I consider that the material is conditionally exempt under section 47F of the FOI Act.

Section 47G – Business

14. Upon examination of the documents, I identified the business information of a number of service providers to Defence.

15. Section 47G of the FOI Act states:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

16. Upon examination of the documents I have identified information concerning companies which is not publically available. Disclosure of this information would, or could have a substantial adverse effect on the future supply of information for the purpose of the administration of a law of the Commonwealth or the administration of matters administered by an agency.

17. As such, I am satisfied that this information contained in these documents is conditionally exempt under section 47G of the FOI Act.

Sections 47F and 47G - Public interest considerations

18. I have found that the identified documents are conditionally exempt under section 47F and 47G of the FOI Act.

19. In assessing whether disclosure of the conditionally exempt material is, on balance, contrary to the public interest, I considered the range of relevant factors that favour access to a document set out in subsection 11B(3)[public interest exemptions – factors favouring access] of the FOI Act. While disclosure may promote some of the objects of the FOI Act, I do not consider it would increase public participation in government processes, nor would it increase scrutiny or discussion of government activities.

20. In coming to my decisions, I had regard to the Guidelines, specifically paragraph 6.29 in regard to public interest factors against disclosure and found that the identified material, if released:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b. could reasonably be expected to prejudice and agency's ability to obtain confidential information; and/or
- c. could reasonably be expected to prejudice the management function of an agency.

21. While I note the release of this material would be of some interest to the applicant, it would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

22. Noting the above, I have decided that disclosure of the specific information would be an unreasonable disclosure of personal information belonging to others and have an adverse affect on agency operations. Accordingly, I consider that the material is exempt under sections 47F and 47G of the FOI Act.

Section 22

23. 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.

Further Information

24. Some of the documents matching the scope of this request contained a dissemination limiting marker, as the documents are approved for public release the marker has been struck through.

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Daniel Barwick
Mr
Accredited Decision Maker
Joint Capabilities Group