



Australian Government
Department of Defence

Objective Reference: BN24109194

FOI 198/20/21 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:

“I would like to obtain a copy of the report by Lieutenant General Mark Evans into the proposed development of Seaward Village. The report was to be provided to Government by February 29 2016. I believe the report was actual release between March and April 2016.”

Excluding personal email address, signatures, PMKeyS numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, Defence only considers 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 eight documents as matching the description of the request.

Decision

4. I have decided to:
- a. release one document in full;
 - b. partially release three documents in accordance with section 22 of the FOI Act, on the grounds that the deleted material is considered exempt under section 47(1)(b) [commercially valuable information], s47F [conditional exemption-personal privacy] and section 47G [conditional exemption-business affairs] of the FOI Act;
 - c. refuse access to four documents under s47 [commercially valuable information] 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

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); and
- e. advice from Defence Housing Authority (DHA).

Reasons for decision

Section 47 – Documents disclosing commercially valuable information

6. Section 47(1)(b) states:

(1) A document is an exempt document if its disclosure under this Act would disclose...

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

7. I have identified information that, if released, could reasonably be expected to cause commercial harm. In particular, disclosure of this material may impact the ability for the Commonwealth to achieve best value for money from tendering processes, compromise the outcome of approaches to the market, and reveal the Commonwealth's financial position for future works.

8. The Guidelines list a number of factors that may assist when determining whether information has a commercial value:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value;
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors;
- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information;
- whether the information is still current or out of date (out of date information may no longer have any value);
- whether disclosing the information would reduce the value of a business operation or commercial activity — reflected, perhaps, in a lower share price.

9. The information detailed within the documents continues to hold commercially valuable information.

10. On this basis, I decided to exempt the release of certain information and Annex C, D, E and Enclosure 1 in full under section 47(1)(b) 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 personal information of individuals in relation to the Seaward Village review. The document reads that no express consent to the public disclosure of their personal information has been obtained by the affected people.

12. The Guidelines state that consideration must be given to the following:

- a. the extent to which the information is well known; and
- b. the availability of the information from publicly accessible sources.

13. Against this criteria, I found that:

- a. the specific pieces of personal information relating to the individuals are not well known; and
- b. this specific information is not readily available from publicly accessible sources.

14. 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

15. Upon examination of the documents, I identified the business information of Defence and DHA general financial positions

16. 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.

17. Upon examination of the documents I have identified information which is not publically available. Disclosure of this information would, or could have a substantial adverse effect Defence and DHA lawful business affairs.

18. 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

19. I have found that the identified material is conditionally exempt under section 47F and 47G of the FOI Act.

20. 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.

21. In coming to my decisions, I had regard to the Guidelines, specifically paragraph 6.22 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 competitive commercial activities of an agency.

22. 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.

23. 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 effect on agency operations. Accordingly, I consider that the material is exempt under sections 47F and 47G of the FOI Act.

Section 22

24. 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 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

25. A number of the documents matching the scope of this request were classified. I have declassified the versions of the documents that are approved for release.

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Sharon Harnett
Accredited Decision Maker
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