



Australian Government
Department of Defence

Reference: 2019/BN10982067

FOI 181/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by **name provided** under the *Freedom of Information Act 1982* (FOI Act), for access to:

... all permits granted for the export of military and dual – use equipment from Australia to the below countries from 1 July 2018 to 30 June 2019:

- 1. United Arab Emirates*
- 2. Saudi Arabia*
- 3. Myanmar*
- 4. Sri Lanka*
- 5. Democratic Republic of the Congo*

Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request and duplicates of documents are excluded from this request.

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 86 documents (permits), totalling 1,208 pages, as matching the scope of this 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 Item/Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:

- a. partially release all of the items 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 47G [public interest conditional exemptions – business] of the FOI Act; and

- b. 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
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines)
 - e. the responses to third party consultation
 - f. advice provided by Defence Export Controls.

Reasons for decision

Conditional Exemption Section 47G – Business

8. Under section 47G of the FOI Act, a

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.*

9. This provision requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring.

10. The Guidelines also provide a list of factors that may assist when deciding whether information has *commercial value*. These are:

- *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.*

11. I assessed whether the release of the information *could unreasonably affect that organisation.... in respect of its lawful business, commercial or financial affairs*. Information in each permit includes information that is of commercial value to the organisation (the permit holder) in that the information identifies the commodities and the actual and/or potential customers of the organisation, and therefore are intrinsic to the commercial opportunities that the organisation has developed.

12. In its interactions with applicants, Defence requires honest and full disclosures by applicants when submitting applications. Applicants have a reasonable expectation that the information they submit to Defence is kept confidential and only used for the purpose of the assessment of the application. Publishing the commercially sensitive information of an organisation delivers market intelligence to domestic and foreign competitors. The consequence of this occurring could reasonably be expected to prejudice the ability of Defence to obtain similar information in the future.

13. 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 releasing the details of the permitted export activities of the organisations could unreasonably affect the business and commercial affairs of those organisations.

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

Public interest considerations

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

16. In assessing whether disclosure of the conditionally exempt documents is, on balance, contrary to the public interest, I took into account the Guidelines, together with a 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. The relevant factors being that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and it would allow the applicant access to their own personal information. The information is not the applicant's personal information.

17. Releasing the documentation to inform debate on a matter of public importance is a factor favouring access. However, information in these documents contain descriptions of specific commodities and the intended end-user of the commodity. Six of the organisations who have been issued with permits that fall within the scope of this request have requested that confidentiality of their customers is maintained due to non-disclosure agreements or so that the

company can retain an advantage over their competitors. I considered that this request to maintain confidentiality of the information is applicable to all of the documents.

18. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- a. an agency's ability to obtain confidential information;
- b. an agency's ability to obtain similar information in the future;
- c. the management function of an agency; and
- d. the competitive commercial activities of an agency.

19. On balance, I formed the view that disclosure of the particular commodities and the intended customers of those commodities are information that has a commercial value to the organisations and that disclosure could unreasonably affect those organisations.

20. None of the factors listed in subsection 11B(4) of the FOI Act were taken into account when making my decision.

21. Accordingly, I consider that the public interest factors against disclosure outweigh the factors for disclosure of the documents that match the scope of the request. I therefore decided that it would be contrary to the public interest to release the information considered exempt, under section 47G of the FOI Act.

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Accredited Decision Maker
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