



Australian Government
Department of Defence

Reference: AHQ/OUT/2019/BQ5936907

FOI 018/19/20 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:

The document requested is the successful tender submission of "Griffith Skills and Training" for the "Army Indigenous Development Program Education and Physical Training" tender. The request for tender was published on 24 August 2018 with a tender closure date of 24 September 2018.

Specifically we seek confirmation on any sub-contractors who are nominated in the successful tenderer submission document.

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 one document, totalling 20 pages, as matching the scope of this request.
4. I have added a FOI reference number and page number to the document.

Decision

5. I have decided to partially release one document 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.

Material taken into account

6. 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. consultation with a third party.

Reasons for decision

Public interest conditional exemption – Section 47G(1)(a) – Business

7. Upon examination of the document, I identified business information of a third party. The Guidelines, at para 6.180, advise that under section 47G of the FOI Act, a document is conditionally exempt if it discloses 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 (business information), where the disclosure of the information:

- *would, or could reasonably be expected to, unreasonably affect the 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.*

8. I note that the use of the word “could” in this provision requires no more than a degree of reasonableness to be applied in deciding whether disclosure would cause the consequences specified.

9. 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 contained within a tender submission would have an adverse effect on the professional, commercial and financial affairs of a third party.

10. In light of the above, I have decided that the specified material identified is conditionally exempt pursuant to section 47G(1)(a) of the FOI Act.

Section 47G – Public Interest Considerations

11. When assessing whether the disclosure of the information is contrary to the public interest, I considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors].

12. In relation to section 11B(3)(a) of the FOI Act [Promote the objects of this Act (including all the matters set out in sections 3 and 3A)], information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act.

13. However disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

14. 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 disclosure of the information could reasonably be expected to:

- a. harm the interests of an individual or group of individuals

b. could reasonably be expected to prejudice the competitive commercial activities of an agency.

15. Releasing the document could reasonably be expected to harm the professional, commercial and financial affairs of a third party. The harm to the third party's activities and interests outweighs any benefits that may be gained by public scrutiny. It is for these reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under section 47G of the FOI Act.

16. None of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making my decision.

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MA Rozzoli
COL
Accredited Decision Maker
Army