



Australian Government
Department of Defence

Reference: 2019/BN11084831

FOI 173/19/20 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 'Expression of Interest' forms completed and submitted by foreign governments to Australian Military Sales, Department of Defence, Australian Government, between January 1 2019 and June 30 2019.

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 two documents, totalling three pages, as matching the description of the request.

Decision

4. I have decided to:

- a. release one document in full;
- b. deny one document on the grounds that the document is considered to be exempt under section 33(a)(iii) [Documents affecting international relations] and section 47(1)(b) [Documents disclosing commercially sensitive information] of the FOI Act.

5. The Department of Defence excludes personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers contained in documents that fall within the scope of a FOI request unless you specifically request such details. Defence also excludes duplicates of documents and documents sent to or from you. Furthermore, Defence only considers final versions of documents.

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. advice obtained from the Australian Military Sales Office;
- f. advice provided by Department of Foreign Affairs and Trade; and
- g. advice provided by third parties.

Reasons for decision

Section 33(a)(iii) – International relations of the Commonwealth

7. Section 33(a)(iii) of the FOI Act exempts information that, if disclosed, would or could reasonably be expected to cause damage to the international relations of the Commonwealth.

8. Paragraph 5.36 of the Guidelines state,

The phrase ‘international relations’ has been interpreted as meaning 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.

9. Foreign Government that submit an Expression of Interest to Australia Military Sales may have expectations that the information contained in that document will be treated as Confidential. That expectation in itself is not sufficient to apply the exemption under section 33(a)(iii) of the FOI Act. In considering the information contained in the second document, I have considered the impact the release of the information would have on the bilateral relationship between Australian and the Foreign Government, and whether releasing the document could damage the good working relations with that Government. I have taken advice from third parties in this consideration.

10. On balance, I have determined that the release of the information would have an adverse impact on the bilateral relationship, and is exempt under section 33(a)(iii) of the FOI Act.

Section 47(1)(b) – Documents disclosing commercially valuable information

11. Section 47(1)(b) of the FOI Act exempts information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

12. Paragraph 5.36 of the Guidelines state,

To be exempt under s 47(1)(b) a document must satisfy two criteria:

- *the document must contain information that has a commercial value either to an agency or to another person or body, and*
- *the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.*

13. 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.*

14. The information contained within the Expression of Interest an early stage of a process whereby a Foreign Government indicates an interest in purchasing equipment from either the Australian Government, or an Australian Defence Industry business. The information in the Expression of Interest has an intrinsic commercial value to the Australian businesses that could fulfil that requirement. The information relates to an emerging market. Releasing the details of the requested products and services from the Expression of Interest could reasonably be expected to diminish the commercial value of the opportunity were foreign competitors to become aware. Foreign competitors may undercut the commercial opportunity either in terms of dollar value, or the entire business opportunity.

15. I consider that the information satisfies the requirements to be exempt under Section 47(1)(b) of the FOI Act.

Section 22 (where documents are being denied in full)

9. 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 document 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.

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Accredited Decision Maker
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