



Australian Government
Department of Defence

FOI 373/16/17 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:

Item 1: Austender has published a contract between the Department of Defence and CONTENT GROUP (CN3428292). The contract was for \$1,250,000 for 'Engagement of a communications specialist'.

In the context of the above statement, for the period 1 January 2017 to 7 June 2017, please provide:

- A copy of all correspondence from the Department of Defence to the supplier in the contract notice detailing the services, deliverables or outputs sought by the Department; and*
- A copy of all correspondence from the supplier in the contract notice to Department of Defence detailing the services, deliverables or outputs to be provided to the Department; and*
- All information sent to potential vendors/suppliers/tenderers for this approach to market.*

Item 2: Austender published a contract between the Department of Defence and P Blashki and Sons Pty Ltd (CN3428920). The contract was for \$35,152.65 for 'Lanyards'.

In the context of the above statement, for the period 1 January 2016 to 7 June 2017, please provide:

- A copy of all correspondence from the Department of Defence to the supplier in the contract notice detailing the items sought by the Department; and*
- A copy of all correspondence from the supplier in the contract notice to Department of Defence detailing the items to be provided to the Department; and*
- All information sent to potential vendors/suppliers/tenderers for this approach to market.*

Item 3: Austender has published a contract between the Department of Defence and DQU PTY LTDT/A DANIEL'S QUALITY (CN3430927). The contract was for \$15,323.00 for 'Replacement cushions for a ship'.

In the context of the above statement, for the period 1 January 2017 to 7 June 2017, please provide:

- *A copy of all correspondence from the Department of Defence to the supplier in the contract notice detailing the items sought by the Department; and*
- *A copy of all correspondence from the supplier in the contract notice to Department of Defence detailing the items to be provided to the Department; and*
- *A copy of any correspondence between the Department and the supplier relating to:*
 - o when the items will be supplied;*
 - o where the items will be supplied;*
 - o which ship they will be supplied to; and*
- *All information sent to potential vendors/suppliers/tenderers for this approach to market'*

Item 4: Austender has published a contract between the Department of Defence and THALES AUSTRALIA - BENDIGO (CN3430931). The contract was for \$31,214 for 'PRIOR TO AUSTENDER GO-LIVE'.

In the context of the above statement, for the period 1 January 2017 to 7 June 2017, please provide:

- *A copy of all correspondence from the Department of Defence to the supplier in the contract notice detailing the products, services, deliverables or outputs sought by the Department; and*
- *A copy of all correspondence from the supplier in the contract notice to Department of Defence detailing the products services, deliverables or outputs to be provided to the Department; and*
- *All information sent to potential vendors/suppliers/tenderers for this approach to market.*

Excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of this request. Also excludes duplicates of documents.

FOI decision maker

2. I am the accredited officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

3. I identified 12 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, Item and Serial number to each of the documents, which corresponds with the schedule.

Decision

6. I have decided to:
- a. release two documents in full;
 - b. partially release ten documents 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 47E [Public interest conditional exemptions-certain operations of agencies] and section 47G [Public interest conditional exemptions-business] of the FOI Act;
 - c. refuse access to documents of the request under subparagraph 24A(1)(b)(ii) [Requests may be refused if documents cannot be found, do not exist or have not been received] 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).

Reason for decision

Section 47E - Certain operations of agencies

8. Where access has been denied to information under section 47E(d) of the FOI Act, I considered that the material would, or could reasonably be expected to have an adverse effect on the proper and efficient conduct of the operations of Defence.

9. Section 47E of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency...

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

11. This information, if released, could affect the integrity and efficacy of the Department of Defence’s internal processes and procedures regarding the berthing schedule of vessels. If the information was made publically available it could reasonably cause an adverse effect on Defence’s ability to conduct, manage and perform its functions and working relationships with contractors in the future.

12. In light of the above, I have decided that the specified material identified is in fact conditionally exempt pursuant to section 47E(d) of the FOI Act.

Section 47G: Business

13. Where access has been denied to information under section 47G of the FOI Act, I considered that the material would, or could reasonably be expected to have an adverse effect on the business of those companies identified by the applicant.

14. Section 47G of the FOI Act states;

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.*

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

16. Upon examination of the documents I identified information relating to the business affairs and financial matters of the organisations, which are of a sensitive nature. Disclosure of this information would show potential competitors its key personnel and pricing in the tender process, allowing other businesses to potentially use this information in their own submissions and negotiations in the future.

17. In light of the above, I have decided that the specified material identified is in fact conditionally exempt pursuant to section 47G of the FOI Act.

Public interest considerations – sections 47E & 47G

18. Section 11A(5) of the FOI Act requires an agency to allow access to a conditionally exempt document unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

19. In determining whether to release the document, I considered 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. I had regard to whether giving access to the applicant at this time would, on balance, be contrary to public interest. Specifically I considered if disclosure of the documents would:

- a) promote the objects of the FOI Act;
- b) inform debate on a matter of public importance; or
- c) promote effective oversight of public expenditure.

20. I found that disclosure of this information may be of interest to the applicant, however it 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).

21. 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 is that the release of this information could reasonably be expected to prejudice:

- b) an agency’s ability to obtain similar information in the future;

- c) the competitive commercial activities of an agency; and
- d) harm the interests of an individual or group of individuals.

22. Releasing operational and business information is likely to harm the various organisations' commercial interests. If Defence was to release this type of information it would lessen confidence in Defence's ability to protect information and restrict the future flow of such information. If the information was made public it could reasonably cause an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future. Further, I do not believe that the removal of the identified business information significantly detracts from the value of the document being sought by the applicant.

23. It is for those reasons that I find that the public interest factors against disclosure outweigh the factors for disclosure and I deem the information exempt under sections 47E and 47G of the FOI Act.

Section 24A: Requests may be refused if documents cannot be found, do not exist or have not been received

24. Section 24A(1) of the FOI Act states:

- (1) *an agency or Minister may refuse a request for access to a document if:*
 - (a) *all reasonable steps have been taken to find the document; and*
 - (b) *the agency or Minister is satisfied that the document:*
 - (i) *is in the agency's or Minister's possession but cannot be found; or*
 - (ii) *does not exist.*

25. Searches were conducted on the Defence record management system (Objective) and hard copy files for correspondence matching the dates specified in the scope of Item 4 of the request. No documents could be located.

26. Based on the above, I am satisfied that no documents could be located that meet the scope of Item 4. In addition I am satisfied that all reasonable steps have been taken to locate the requested documents. Accordingly I have decided to refuse access under section 24A(1) of the FOI Act.

Digitally signed by
 Owen Spoor
 Date: 2017.09.28 09:31:13
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Mr Owen Spoor
 Accredited Decision Maker
 Capability and Sustainment Group