



Reference: BN9713259

FOI 072/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

'In ANAO's Performance Audit Report - Auditor-General Report NO.2 OF 2017–2018 - Defence's Management of Materiel Sustainment, published Tuesday 11 July 2017, footnote 128 refers to several contracts awarded to Bechtel.

Specifically, I am seeking the Section 23 submissions for the contract noted from May 2016 with Bechtel for \$65.8 million, to conclude in June 2018. And the Section 23 submissions for the November 2016 contract amendment which increased the contract by \$32 million'

I do not require personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, I exclude duplicates of documents and only require 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 two (2) documents as matching the description of the request.

Decision

4. I have decided to:
- a. partially release two (2) documents in accordance with 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

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. response from third party consultation.

Reasons for decision

Section 47G - Public interest conditional exemptions – Business

6. Upon examination of the documents I identified commercially sensitive information about Bechtel, a third party to this request, such as finance and contract arrangements.

7. Section 47G(1) 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.

8. The Guidelines at paragraph 6.184 state that *the operation of the business exemption depends on the effect of disclosure rather than the precise nature of the information itself*. In the context of the documents identified, disclosure of the commercially sensitive information would expose the internal business operations and financial matters of Bechtel to the public and subsequently its competitors. I considered that disclosing the costing methodology could reasonably be expected to unreasonably affect Bechtel in respect of its commercial and financial affairs.

9. I also consider that disclosure of this commercially sensitive information could reasonably be expected to adversely affect future business decisions as Bechtel would need to contrive the way they cost for tenders. If Defence disclosed the business information, it would result in a loss of confidence between Defence and Bechtel and could prejudice frank and open future supply of information to the Commonwealth.

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

11. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest. My public interest considerations are detailed below.

Section 47G - Public interest considerations

12. Where access has been denied to information under section 47G(1) of the FOI Act, I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act.

13. The relevant factors in favour of release are that disclosure may promote some of the objects of the FOI Act, as information held by the Government is a national resource and may inform debate on a matter of public importance, or promote effective oversight of public expenditure.

14. However disclosure 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).

15. 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:

- a. prejudice the competitive commercial activities of a business;
- b. harm the interests of an individual or group of individuals;
- c. prejudice an agency's ability to obtain confidential information; and
- d. prejudice an agency's ability to obtain similar information in the future.

16. In paragraph 6.189 the Guidelines state that *"The AAT has said, for example, that there is a strong public interest in knowing whether public money was accounted for at the appropriate time and in the manner required; and in ensuring that public programmes are properly administered."* However, I have found that at this time, the public interest has already been served by the information being disclosed and the commercially sensitive information identified within the documents would not further enhance the public on the proper administration of public monies.

17. On balance, I consider that the benefit to the public from disclosure is outweighed by the benefit to the public from withholding the information. 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 section 47G of the FOI Act.

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

Third party consultation

19. I decided to consult with a third party regarding their information which was contained in the documents. In response to this consultation, the third party provided a submission objecting to the release of their business information. I took the submission into consideration and I agree with their objections.

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Kris Quaedvlieg
Accredited Decision Maker
Associate Secretary Group