



Reference: BN21815649

FOI 107/20/21 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:

“All briefings, memos and talking points prepared for Minister of Defence [sic] Linda Reynolds during the past 15 days which address the 99-year lease of the Port of Darwin to Landbridge.”

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 have identified four documents (18 pages) that match the terms of this FOI request. The request was lodged on 9 September 2020 and the documents identified fall within the date-range of the request.

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

5. I have decided to:

- a. partially release four 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 47 [exemption-Commercially valuable information]; and section 47B [conditional exemption – Commonwealth-State relations]; 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

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. the relevant provisions of 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. advice received from Strategic Policy Division, Department of Defence.

Reasons for decision

Section 47 – Documents disclosing commercially valuable information

7. Section 47 of the FOI Act provides that a document is exempt from disclosure requirements ‘if its disclosure under the Act would disclose (a) trade secrets; or (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed’.

8. I have identified information that, if released, could reasonably be expected to cause commercial harm in relation to the arrangement between the Northern Territory Government and the Landbridge Group for the lease of the Port of Darwin. In applying the criteria set out in the Guidelines, I have considered whether the information was publicly available or strictly limited to the parties involved, the currency and commercial value of this information, and whether disclosure would impact the business affairs of the companies. I identified information that is not generally known information and is likely to be considered valuable commercial information about the lease arrangements.

9. On this basis, I decided to exempt the release of this information under section 47(1)(b) of the FOI Act.

Section 47B - Public interest conditional exemption – Documents affecting Commonwealth-State relations

10. Section 47B of the FOI Act conditionally exempts a document where disclosure would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a state or territory government. In accordance with the Guidelines, I examined the content of each document that was relevant to the terms of the FOI request.

11. I have identified material in the documents that I consider, given the nature of the material, would damage Commonwealth-State relationships if disclosed as the material relates to commercial information not otherwise readily available. I have decided to exempt and redact this material from the documents partially released under this FOI request.

Public interest consideration – Section 47B

12. I have found that material identified in the documents are conditionally exempt under section 47B of the FOI Act. 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.

13. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factors are that disclosure may promote the objects of the FOI Act, as information held by the Government is a national resource. However, the disclosure of this information would not increase public participation in the Commonwealth-State processes as they relate to the operations and options available in relation to the lease.

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 release of this information could reasonably be expected to prejudice:

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

15. 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 47B of the FOI Act. None of the factors listed in section 11B(4) [Irrelevant factors] were taken into account when making my decision.

Further information

16. Some of the documents matching the terms of this FOI request contained official information handling markers. As these documents are approved for release, these have been marked “Declassified”.

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John Anderson
Accredited Decision Maker
Strategy, Policy, and Industry Group

22 October 2020